**2022 FALL TERM**

| COURSE TITLE | PROFESSOR | GRADE | CREDITS |
|---|---|---|---|
| Corporate Crime | Buell, S. | 4.00 | 4.00 |
| Use of Force in International Law: Cyber, Drones, Hostage Rescues, Piracy, and More | Dunlap, C. | 3.90 | 2.00 |
| Comparative Law | Qiao, S. | 3.80 | 3.00 |
| Human Rights Advocacy | Huckerby, J. | 3.70 | 2.00 |
| Property Law | Foster, A. | 3.60 | 4.00 |

**2023 WINTERSESSION**

| COURSE TITLE | PROFESSOR | GRADE | CREDITS |
|---|---|---|---|
| Deposition Practice | Farel, L. | *Credit Only* | 0.50 |
| Leadership and Communication in the Law | Gentry, P. and Gilley, E. | *Credit Only* | 0.50 |

**2023 SPRING TERM**

| COURSE TITLE | PROFESSOR | GRADE | CREDITS |
|---|---|---|---|
| Business Associations | de Fontenay, E. | 4.00 | 4.00 |
| Investigating and Prosecuting National Security Cases | Stansbury, S. | 3.90 | 2.00 |
| Comparative Constitutional Design | Knight, J. | 3.80 | 2.00 |
| Ethics & the Law of Lawyering | Richardson, A. | 3.70 | 2.00 |
| Criminal Procedure: Adjudication | Dever, J. | 3.60 | 3.00 |
| Evidence | Stansbury, S. | 3.30 | 3.00 |
| Race and the Law | Jones, T. | *Credit Only* | 1.00 |

TOTAL CREDITS: 70.50
CUMULATIVE GPA: 3.67

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I write to recommend Tatiana Varanko for the position of law clerk in your chambers. I do so with exceedingly strong enthusiasm.

Tatiana was my student in Corporate Crime, a demanding large course in the fall of 2022. I have come to know Tatiana from her participation in the course, meetings outside of class, including to discuss career and clerkship plans, and my review of her written work.

Tatiana's grade of 4.0 in my course was truly outstanding. Her exam paper consisted of twelve pages of writing produced in an eight-hour take-home that required covering four problems with multiple legal issues. Tatiana earned a score that tied three others, out of 43 students, for the best work in the class, in an anonymous grading process. The four-credit Corporate Crime course is rigorous and advanced, routinely attracting a cohort of the sharpest and most ambitious students in the Law School. (The course materials, which are published for free download, or bound at cost, can be seen at buelloncorporatecrime.com; the students are required to read and study almost every page of the two volumes.) Substantively, the course requires students to comprehend a broad range of topics that are challenging and unfamiliar for those who are, as Tatiana was, in only the third semester of law school: federal criminal law, constitutional criminal procedure, securities regulation, corporate law, evidence, and regulation of the legal profession.

Tatiana's paper was at the top of a group that included many of Duke Law's best performers in the second- and third-year classes. In my estimation, this showing, among an ambitious collection of some of the nation's best law students, is very strong evidence of Tatiana's promise for a career as an exceptional attorney at a national level of practice.

Tatiana is a fluent and skilled writer for her stage of education and is improving in that facility all the time. She has displayed these skills in multiple settings across her work at Duke, including as a student in the legal writing program and as a major participant in our Innocence Project and our Bolch Judicial Institute. Tatiana is seeking a clerkship in large part to continue to develop her abilities to stand out on paper and orally as a future litigation attorney who has a deep and demonstrated interest in courts. Tatiana's experiences as a full-time employee at the FJC prior to law school, her work in Hungary and the Netherlands, and her exceptional devotion to a variety of extracurricular projects at Duke are proof positive of her suitability for a demanding, full-time position in federal chambers.

Tatiana is a humble person, a "first generation" lawyer who demands a great deal of herself. One can see this in all she has done to this early stage in her life, from working as a school custodian while in college, to establishing herself as an important staffer at the FJC, to becoming integral to several programs at Duke. Even as one who came to law without prior conceptions about the field's content or culture, Tatiana is forging an independent path for herself that arises naturally from her genuine interests in and commitment to justice and international affairs. In the classroom, she is a careful listener more than one who seeks to control discussion. In the office, she is at ease in presenting herself. Tatiana will continue to grow rapidly as a lawyer and person. I see a high ceiling for her, especially with more of the mentoring she has been so astute and effective in seeking out since her undergraduate days. Whoever Tatiana clerks for, I expect the experience will lead to a career-long and deeply rewarding relationship for both her and the judge.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, and having taught and mentored thousands of law students, I am confident in predicting that Tatiana Varanko would be an excellent hire for any judge with a demanding docket and chambers that highly values professionalism and collaboration. I am happy to assist you further in any way with your evaluation of her application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

Sam Buell - buell@law.duke.edu - 919-613-7193

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I write this very enthusiastic letter of recommendation on behalf of Tatiana Varanko, a member of the Duke University Law School JD-LLM class of 2024, who has applied for a clerkship in your chambers.

I have come to know Tatiana quite well at Duke Law, both as a student in two of my courses and as one of my research assistants. Tatiana, who also serves as an Articles Editor of the Duke Journal of International and Comparative Law, is a very bright and articulate student who is deeply curious about the law and legal institutions and who writes clear and cogent prose. She is also conscientious, respectful, and a pleasure to work with.

I first met Tatiana in the Spring of 2022. As a student in Duke Law's distinctive JD-LLM program in international and comparative law, Tatiana enrolled in International Law as a required first-year course. International Law considers a broad range of issues relating to the rules that govern the relations between nation states and between governments and private parties. The key skills that the course emphasizes include understanding the relationship among the actors, norms, and institutions of the international legal system as well as detailed analyses of treaty texts, domestic statutes, the resolutions of intergovernmental organizations, and the decisions of international tribunals and domestic courts.

Tatiana made sustained, high-quality contributions to class discussions throughout the semester. She received a final grade of 4.0 in International Law, placing her in the top 10% of a class of 48 students. Tatiana's final exam answer was excellent. She correctly identified the key legal issues, effectively marshalled the facts and evidence required to analyze them and explained her reasoning in clear and cogent prose. Her answer is especially noteworthy given that she was competing against several upper-level JD and foreign LLM students, as well as her first year classmates.

Tatiana also enrolled in "Authority and Legitimacy in International Adjudication," which I co-taught in July 2022 as part of the Duke-Leiden Institute in Global and Transnational Law, which is held in The Hague in the Netherlands. This seminar analyzes and compares international courts in different areas, including economic integration, trade, human rights, and criminal law. Students review the doctrines developed by these international judicial bodies, consider the legal and political challenges that they have confronted, and the assess the extent to which they have succeeded in overcoming these challenges. Tatiana received a final grade of 3.8, tied for the third highest grade in a class of 16 students from Duke Law School and from universities in Europe and Asia.

Tatiana's excellent academic performance extends well beyond international law. She has received top grades in courses as varied as Business Associations, Corporate Crime, and Investigating and Prosecuting National Security Cases. Although Duke Law does not rank students, her cumulative GPA of 3.67 suggests that she is within the top 10% of her class.

Based on Tatiana's strong academic performance, I invited her to work for me as a research assistant. She has help me with various projects relating to the dispute settlement mechanisms created by social media companies such as Facebook and Google for challenging the removal of online content. In 2022, for example, the European Union adopted a new regulation, the Digital Services Act, that requires internet platforms to provide such mechanisms to their users. Most recently, she has assisted me in preparing for the UN Human Rights Committee's review of several reports by States parties to the International Covenant on Civil and Political Rights, a multilateral treaty to which the United States is also a party.

For each of these research assignments, Tatiana identified a comprehensive list of relevant (and often difficult to find) sources and prepared clear and concise analytical memos setting forth her findings. I have been very satisfied with her research and writing abilities and her attention to detail. I have also been impressed by her work ethic and professional and enthusiastic attitude.

Tatiana has also had an interesting professional experience relevant to a clerkship. In May and June 2022, she served as a legal intern with the Constitutional Court of Hungary. Tatiana summarized individual rights decisions from other constitutional courts in Central and Eastern Europe and analyzed cases where the Hungarian Constitutional Court referenced foreign and international law.

Larry Helfer - Helfer@law.duke.edu - 919-613-8573

In sum, based on my many interactions with Tatiana both inside and outside of the classroom, I am confident of her ability to handle the diverse responsibilities of a judicial law clerk. If there is any additional information that I can provide to convince you to hire her, please feel free to contact me at helfer@law.duke.edu or 919-613-8573.

Sincerely yours,

Laurence R. Helfer
Harry R. Chadwick, Sr. Professor of Law

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Tatiana Varanko

Dear Judge Walker:

I am writing to strongly endorse the application of Ms. Tatiana Varanko to be your law clerk. Tatiana is a student here at Duke University School of Law, and I got to know her especially well when she took my *Use of Force in International Law* class last fall.

By way of information, I am a Professor of the Practice and Director of the Center on Law, Ethics and National Security at Duke Law School. Prior to retiring from the military in June of 2010, I served as the Air Force's deputy judge advocate general with responsibility for assisting in the supervision of more than 2,550 full and part-time attorneys.

Tatiana is a wonderful student: prepared, courteous to others, and a hard worker. She is also very articulate and able to 'think on her feet.'

Tatiana wrote a superb paper for my *Use of Force* class, "Assessing the Viability of the Use of Force to Respond to Climate Rogue States and Criminal Justice Alternatives." Her writing shows her to be a skilled researcher who can analyze complex issues, and then craft a clearly expressed legal analysis. She is definitely a standout among her peers, as is evidenced by her selection as the Articles Editor of Duke's prestigious *Journal of Comparative & International Law*.

Beyond her considerable professional talents, Tatiana is a very likeable and thoughtful young lawyer-to-be. I'll bet she'll be a very popular colleague in your chambers. Importantly, everything I know about Tatiana shows her to be a person of unquestioned integrity with very strong ethical values.

I am certain that you would be extremely pleased to have Tatiana as your law clerk. I'm more than happy to discuss this with you at your convenience.

Sincerely yours,

Charles J. Dunlap, Jr.
Major General, USAF (Ret.)
Professor of the Practice of Law
Executive Director, Center on Law,
Ethics and National Security

Charles Dunlap - dunlap@law.duke.edu - 919-613-7233

**TATIANA VARANKO**
4130 Garrett Road, Apartment 731, Durham, NC 27707
tatiana.varanko@duke.edu | (203) 721-0040

## WRITING SAMPLE

I wrote this appellate brief for my Legal Analysis, Research, and Writing course at Duke University School of Law in the spring of 2022. The assignment was to address the meaning of the phrase "foreign or international tribunal" in 28 U.S.C. § 1782. Writing for the Respondents-Appellees, I argued that the phrase does not cover private arbitration.

The cover page, table of contents, and table of authorities have been omitted for length.

## STATEMENT OF THE ISSUE

28 U.S.C. § 1782 authorizes U.S. district courts to compel individuals in their jurisdiction to provide discovery for proceedings before a "foreign or international tribunal" upon request from that tribunal or interested persons. Does the phrase "foreign or international tribunal" in 28 U.S.C. § 1782(a) include private arbitration such that foreign parties can request discovery from U.S. citizens for use in private arbitral proceedings abroad?

## STATEMENT OF THE CASE

Petitioner-Appellant Op Zee Verven ("O.Z.V.") is a Dutch company that manufactures and sells paint intended for exterior use on boats. ER-1. O.Z.V. has a contract with Yacht-Sea!, an English company, for the sale of this paint. ER-2. Yacht-Sea! uses it on vessels it manufactures and sells worldwide. ER-2. The contract contains a provision naming the London Court of International Arbitration, a private arbitral body, as the forum for resolving disputes arising from the contract. ER-2.

A Yacht-Sea! customer sued the company in late 2020 for losses sustained in repairing his yacht. ER-2. It had taken on water over several months while moored at the marina in California where the Respondents-Appellees Omar Ayad, Jennifer Jones, and Yi-Chin Cho work. ER-2. In mid-2021, a jury found for the customer and ordered Yacht-Sea! to pay damages. ER-2. Yacht-Sea! sought indemnification, claiming the damages were caused by paint failure. ER-2. In September 2021, Yacht-Sea! initiated private arbitral proceedings with O.Z.V. under their contract. ER-2.

On October 5, O.Z.V. filed an Application for an Order to Take Discovery in the U.S. District Court for the Central District of California. ER-1. It requested an order authorizing it to obtain testimony from the Respondents through depositions. ER-1. O.Z.V. claimed that its

request was under 28 U.S.C. § 1782 and that the London Court of Arbitration, a private arbitral body, is a "foreign or international tribunal." ER-3. The employees filed a Response on October 25, asserting that a private arbitral body does not qualify as a "foreign or international tribunal" under § 1782 and requesting that the district court reject O.Z.V.'s Application. ER-5, ER-6.

On December 6, the district court issued an Order denying O.Z.V.'s Application. ER-7. The court held that the London Court of Arbitration is not a "foreign or international tribunal" under § 1782 because it is a private commercial arbitral body. ER-8. Thus, the district court lacked the authority to grant O.Z.V.'s request. ER-8. O.Z.V. filed its Notice of Appeal on January 3, 2022. ER-9. This appeal is the subject of the proceedings before this Court. ER-9.

## ARGUMENT

### THE TERM "TRIBUNAL" IN 28 U.S.C. § 1782 DOES NOT ENCOMPASS PRIVATE ARBITRAL BODIES.

28 U.S.C. § 1782 allows district courts to compel individuals in its jurisdiction to provide testimony or other discovery for proceedings before a "foreign or international tribunal." 28 U.S.C. § 1782(a). Courts may provide this international judicial assistance upon receipt of a request or letter rogatory from that tribunal or a request from an interested person in the proceedings. *Id.*

The meaning of "foreign or international tribunal" in § 1782 is central to this case. The Petitioner incorrectly claims that the phrase includes private arbitration. ER-3. However, the plain language, legislative history, and policy implications show that the language only encompasses government-sanctioned bodies. This Court should hold that private arbitral bodies are not covered by § 1782 and affirm the district court's order denying O.Z.V.'s request for discovery in proceedings before the London Court of Arbitration.

Whether a private arbitral body is a "foreign or international tribunal" under § 1782 is a matter of statutory interpretation, which constitutes a question of law. *See In re Hill*, 811 F.2d 484, 485 (9th Cir. 1987). Questions of law are reviewed de novo on appeal. *Id.*

Other circuits have previously addressed this issue. The Fourth and Sixth Circuits have incorrectly held that § 1782 does extend to private arbitration. *Servotronics, Inc. v. Boeing Co.*, 954 F.3d 209, 216 (4th Cir. 2020); *In re Application to Obtain Discovery for Use in Foreign Proc.*, 939 F.3d 710, 714 (6th Cir. 2019). However, the Second, Fifth, and Seventh Circuits have correctly held that it does not. *Servotronics, Inc. v. Rolls-Royce PLC*, 975 F.3d 689, 696 (7th Cir. 2020); *In Re Guo*, 965 F.3d 96, 100 (2d Cir. 2020) (reaffirming *National Broadcasting Co., Inc. v. Bear Stearns & Co., Inc.*, 165 F.3d 184, 185 (2d Cir. 1999)); *Republic of Kazakhstan v. Biedermann Int'l*, 168 F.3d 880, 883 (5th Cir. 1999).[1]

This Court should align with the latter circuits and hold that § 1782 does not apply to private arbitration. The plain language and the legislative history illustrate that the statute only applies to government-sanctioned proceedings. This interpretation is further supported by the conflict a contrary interpretation would cause with the Federal Arbitration Act and the detrimental effects it would have on the core purposes of arbitration. For these reasons, the Court should hold that § 1782 excludes private arbitration and affirm the district court's denial of O.Z.V.'s request for discovery for proceedings before the London Court of Arbitration.

[1] The only Supreme Court decision involving § 1782 does not answer whether it applies to private arbitration. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 246–47 (2004) (holding that an interested person can make a request under § 1782 for proceedings before the European Commission and that those proceedings need only be "in reasonable contemplation").

A. The plain language of 28 U.S.C. § 1782 does not include arbitration.

When resolving disputes over statutory interpretation, the Court must begin by examining the ordinary meaning of the text and the statute's structure. *United States v. King*, 24 F.4th 1226, 1231 (9th Cir. 2022). If this yields an unambiguous meaning, the Court must stop its analysis and disregard any additional arguments. *Id.* Section 1782(a) permits a "foreign or international tribunal" or interested person to request discovery for proceedings but does not specifically define "foreign or international tribunal." However, a review of the ordinary meaning of the language contemporaneous to its incorporation into the statute demonstrates that private arbitral bodies are not covered by § 1782. This is further supported by the statutory scheme, which indicates that assistance under § 1782 is only available in proceedings before a government entity.

1. The ordinary meaning of the phrase "foreign or international tribunal" does not include arbitral bodies.

When a statute does not define a term, the Court should determine its ordinary meaning by examining a dictionary definition contemporaneous to when the statute was enacted. *United States v. Carona*, 660 F.3d 360, 367 (9th Cir. 2011). When "foreign or international tribunal" was added to § 1782 in 1964,[2] *Black's Law Dictionary* defined "tribunal" as "[t]he seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise." *Tribunal*, *Black's Law Dictionary* (4th ed. 1951). Notably, the definitions all include either "judge" or "court," which are inherently government-linked terms. Other dictionaries are even more explicit, stating that a tribunal "implies . . . power of decision of adjudicative effectiveness. Adjudication is a

[2] Act of October 3, 1964, Pub. L. No. 88-619, § 9, 78 Stat. 995, 997 (1964).

government function, the exercise of the sovereign power of the state." *Tribunal*, *Pope Legal Definitions* (1st ed. 1919). This reinforces that a tribunal was considered a government entity in 1964. Thus, the Court should interpret the language of § 1782 as excluding private entities.

However, the statute's wording is even more particular: it modifies "tribunal," specifying that it be "foreign" or "international." The doctrine of noscitur a sociis instructs that "a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams,* 553 U.S. 285, 294 (2008). Dictionaries when § 1782 was amended defined "foreign" as "[b]elonging to another nation or country; belonging or attached to another jurisdiction." *Foreign*, *Black's Law Dictionary* (4th ed. 1951). The use of "belonging" and "attached" demonstrates the link between the state and the tribunal. Taken together, "foreign tribunal" refers to a court belonging to another country, not to a private entity. This is further supported by precedent, which shows that before the language change, the Supreme Court understood "foreign tribunal" to mean a foreign court. *See Canada Malting Co. v. Patterson S.S.*, 285 U.S. 413, 423 (1932) (stating that U.S. courts can decline jurisdiction if a foreign tribunal is a more suitable venue and that a Canadian court was more suitable in the instant case).

The second modification to "tribunal" is "international." The word's ordinary meaning is "participated in by two [or] more nations." *International*, *Webster's New International Dictionary of the English Language* (3d ed. 1961). This indicates that a tribunal that is "international" derives authority from an agreement between nations. This meaning of "international tribunal" is supported by contemporaneous discussions about international tribunals in Supreme Court concurrences. *See Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 178 n.4 (1951) (Douglas, J., concurring) (referring to the International Military Tribunal at Nuremberg as an international tribunal); *Hirota v. Gen. of the Army Douglas*

*MacArthur*, 338 U.S. 197, 204–05 (1949) (Douglas, J., concurring) (referring to the International Military Tribunal for the Far East as an international tribunal).

The Court has a "duty to respect not only what Congress wrote but, as importantly, what it didn't write." *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1900 (2019). Noticeably absent from § 1782 are the modifiers "private" or "arbitral" before the word "tribunal." *See generally* § 1782. Nowhere in the plain text of the statute is there anything that can be construed to include arbitral bodies that are not government sanctioned. *Id.* The ordinary meaning of the text is unambiguous: a private arbitral body is not a "foreign or international tribunal" under § 1782.

2. The statutory context of 28 U.S.C. § 1782 reveals that a "foreign or international tribunal" is a government-sanctioned judicatory body and does not include private arbitration.

The greater statutory scheme further demonstrates that a "foreign or international tribunal" is a judicative body deriving its authority from one or more states. When an act contains the same phrase in multiple parts, the Court should construe it consistently throughout. *City of Los Angeles v. Barr*, 941 F.3d 931, 941 (9th Cir. 2019). The Act amending the language of § 1782 also adds 28 U.S.C. § 1696 and 28 U.S.C. § 1781 to the U.S. Code. §§ 4, 8–9, 78 Stat. at 995–97. Section 1696 uses the phrase "foreign or international tribunal" when discussing service of process in foreign and international proceedings. Section 1781 uses it repeatedly when outlining the rules for the transmission of letters of rogatory or requests between a tribunal in the U.S. and one abroad. Both use "foreign or international tribunal" when discussing actions that are inherently interactions between governments. *Rolls-Royce PLC*, 975 F.3d at 695. In this statutory context, the identical language in § 1782 should be understood to apply solely to government-sanctioned bodies and not extend to private arbitration. Since the meaning of the

phrase is unambiguous after a complete textual reading, the Court should end its analysis there and not pay further mind to extrinsic arguments. *See King*, 24 F.4th at 1231.

B. The legislative history illustrates that § 1782 was not intended to apply to private arbitral bodies.

The Court should only expand its analysis to include legislative history if the text of the statute is ambiguous, and the language of § 1782 clearly refers to government entities. *J.B. v. United States*, 916 F.3d 1161, 1167 (9th Cir. 2019). However, if the Court does expand its analysis beyond the text, it will discover that the legislative history further demonstrates that § 1782 excludes private arbitral bodies.

The purpose of the Act amending the language of § 1782 was "[t]o improve judicial procedures for serving documents, obtaining evidence, and providing documents in litigation with international aspects." § 1, 78 Stat. at 995. Notably, the purpose is to improve procedures *in litigation*, which is inherently court-linked. This indicates that Congress intended to provide international judicial assistance to government-sanctioned proceedings in a foreign or international forum, not private proceedings.

Before Congress amended the language of § 1782, the statute did not provide assistance to international tribunals. Hans Smit, *Assistance Rendered by the United States in Proceedings before International Tribunals*, 62 Colum. L. Rev. 1264, 1272 (1962). However, requests for assistance in treaty-based arbitral proceedings between the U.S. and Canada and from the United States-German Mixed Claims Commission in the 1930s revealed the need to expand U.S. judicial assistance beyond foreign courts. *Id.* at 1272–73. *See also* S. Rep. 88-1580, at 3784 (1964) (citing Smit with approval). Congress enacted 22 U.S.C. §§ 270–270g to allow U.S. courts to provide assistance to international tribunals. *See* 22 U.S.C. §§ 270–270g (1962), *repealed by* § 3, 78 Stat. at 995. However, U.S. assistance was still limited to international

tribunals to which the U.S. belonged and proceedings involving the U.S. or one of its citizens. *Id*. Congress found that "[t]his limitation [was] undesirable" and sought to expand assistance to all proceedings before such entities. S. Rep. 88-1580, at 3784–85.

In 1958, Congress established the Commission and Advisory Committee on International Rules of Judicial Procedure ("the Commission") to provide recommendations for improving U.S. assistance to "foreign courts and quasi-judicial agencies." Act of September 2, 1958, Pub. L. No. 85-906, §§ 1–2, 72 Stat. 1743, 1743 (1958). Congress adopted the Commission's proposals in full; this included replacing "in any judicial proceeding pending in any court in a foreign country" in § 1782 with "in a proceeding in a foreign or international tribunal." 28 U.S.C. § 1782(a) (1958), *amended by* § 9, 78 Stat. at 997; § 1782(a). This change was aimed at expanding the language of § 1782 to encompass the international tribunals previously covered by 22 U.S.C. §§ 270–270g and removing the limitations it had imposed. S. Rep. 88-1580, at 3785.

Congress intended for the new language to be more liberal than the previous phraseology, but not for it to be limitless. S. Rep. 88-1580, at 3785. Hans Smit, who helped draft the Commission's recommendations,[3] identified in 1962 that "an international tribunal owes both its existence and its powers to an international agreement [between states]." Smit, *supra*, at 1267. Further, the Committee included in its recommendation examples of applicable proceedings. S. Rep. 88-1580, at 3788. These included "proceedings . . . pending before investigating magistrates in foreign countries . . . administrative and quasi-judicial proceedings . . . [and proceedings] before a foreign administrative tribunal or quasi-judicial agency as in proceedings before a conventional foreign court." S. Rep. 88-1580, at 3788. Notably, these are all

[3] *In re Letter of Request from Crown Prosecution Serv. of United Kingdom*, 870 F.2d 686, 689 (D.C. Cir. 1989).

government-linked bodies. Private arbitration was not mentioned once. *See generally* S. Rep. 88-1580.

Nowhere in the Commission's Report or the Congressional Record is there a mention of private arbitral bodies. *See generally* 1105 Cong. Rec. 596–98, 22,857 (1964); S. Rep. 88-1580 at 3782–3794. This shows that Congress did not consider extending § 1782 to encompass such entities. If Congress had wanted to make such a large alteration to the purpose and applicability of § 1782 it would have discussed it. Since it did not, the evidence intimates that Congress did not intend for the amended § 1782 to cover private arbitration. *National Broadcasting Co., Inc.*, 165 F.3d at 189. Thus, the Court should hold that a "foreign or international tribunal" is a government-sanctioned body.

C. Enlarging the definition of "tribunal" under § 1782 to include private arbitral bodies would have undesirable policy implications.

The Court should apply the pure text meaning of a statute when the language is clear, as it is in this case. *J.B.*, 916 F.3d at 1167. However, if it must expand its analysis, it may consider public policy alongside legislative history. *Garcia v. PacifiCare of California, Inc.*, 750 F.3d 1113, 1116 (9th Cir. 2014). Doing so for § 1782 only provides further evidence that "foreign or international tribunal" should be interpreted to exclude private arbitration.

When interpreting the language of a statute, the Court should aim to avoid conflict with other federal statutes. *California ex. rel. Sacramento Metro. Air Quality Mgmt. Dist. v. United States*, 215 F.3d 1005, 1012 (9th Cir. 2000). This means that the Court should read § 1782 to exclude private arbitration. Doing otherwise would result in U.S. courts having a different policy for providing assistance to private arbitration abroad than they do for domestic private arbitration.

The Federal Arbitration Act is the mechanism for obtaining discovery for domestic private arbitration. *See* 9 U.S.C. § 7. The judiciary's role is more limited under 9 U.S.C. § 7 than under 28 U.S.C. § 1782. *See generally id.*; 28 U.S.C. § 1782. Section 7 permits *arbitrators* to issue a summons for documents or testimony for use in proceedings. 9 U.S.C. § 7. However, they can only petition a district court to compel such discovery if most of the arbitral panel sits within the court's jurisdiction. *Id.* Additionally, by explicitly giving such permissions to arbitrators, § 7 indicates that interested parties cannot make such requests. *National Broadcasting Co., Inc.*, 165 F.3d at 187. By contrast, 28 U.S.C. § 1782 allows both a tribunal and interested persons to request discovery without imposing limitations beyond the Federal Rule of Civil Procedure. Consequently, if the Court interprets § 1782 to include private arbitral bodies, parties to foreign arbitration will be able to request what parties to domestic arbitration cannot. *See* 9 U.S.C. § 7; 28 U.S.C. § 1782. It is illogical to think that Congress intended for foreign arbitral bodies to have more access to U.S. judicial assistance than domestic ones. To maintain consistent discovery policies for private arbitration at home and abroad, the Court must interpret "foreign or international tribunal" under § 1782 as excluding private arbitral bodies.

Extending § 1782 to include private arbitration would also undermine the incentives for choosing to arbitrate rather than litigate. Parties include arbitration provisions in their contracts to make the dispute resolution process more efficient and cost-effective than litigation. Writing arbitration into a contract allows parties to decide in advance on the forum and procedures they will use. *Biedermann Int'l*, 168 F.3d at 883. However, if "parties succumb to fighting over burdensome discovery requests far from the place of arbitration . . . [it will] thwart[] private international arbitration's greatest benefits." *Id.* Extending § 1782 would cause discovery requests for private arbitration to become unduly burdensome on parties and the courts that

consider them. To avoid such problems, the Court must read "foreign or international tribunal" in § 1782 to apply only to state-sanctioned bodies.

## CONCLUSION

The Court should hold that "foreign or international tribunal" under 28 U.S.C. § 1782 does not cover private arbitration. In the present case, this means that the London Court of Arbitration is not covered by § 1782. Thus, the Respondents respectfully request that the Court affirm the Order denying O.Z.V.'s request for discovery.

Date: March 21, 2022

Respectfully submitted,

By /s/ Tatiana Varanko

*Attorney for Respondents-Appellees*
Omar Ayad, Jennifer Jones, and
Yi-Chin Cho

## Applicant Details

| | |
|---|---|
| First Name | **Katherine** |
| Last Name | **Viti** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **vitik2326@gmail.com** |
| Address | **Address**<br>**Street**<br>**895 Campus Dr #333D**<br>**City**<br>**Stanford**<br>**State/Territory**<br>**California**<br>**Zip**<br>**94305**<br>**Country**<br>**United States** |
| Contact Phone Number | **5409313946** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **University of Virginia** |
| Date of BA/BS | **May 2021** |
| JD/LLB From | **Stanford University Law School**<br>**http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90515&yr=2011** |
| Date of JD/LLB | **June 16, 2024** |
| Class Rank | **School does not rank** |
| Law Review/ Journal | **Yes** |
| Journal(s) | **Stanford Technology Law Review**<br>**Stanford Law Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **Yes** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Sonne, James
jsonne@law.stanford.edu
650-723-1422

Zambrano, Diego
dzambrano@law.stanford.edu

Letter, Dean's
deansletter@law.stanford.edu
650-723-4455

Reese, Elizabeth H.
ereese@law.stanford.edu

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

**KATHERINE VITI**
895 Campus Drive #333D, Stanford, CA 94305 | (540) 931-3946 | katherineviti@stanford.edu

June 12, 2023

The Honorable Judge Jamar K. Walker
U.S. District Court for the
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising third-year at Stanford Law School and write to apply to the 2024-2025 clerkship with you in the Western District of Virginia. I grew up in Clarke County, Virginia, attended the University of Virginia, and am extremely excited to return to Virginia to clerk and practice law. My extensive personal ties to Virginia make me particularly invested in clerking with you.

Enclosed please find my resume, references, law school transcript, and writing sample for your review. Professors Diego Zambrano, Elizabeth Reese, and James Sonne are providing letters of recommendation to support my application. I welcome the opportunity to further discuss my qualifications and interest; thank you for your consideration.

Sincerely,

Katherine Viti

# KATHERINE VITI

(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu


## EDUCATION

**Stanford Law School** Stanford, CA
J.D., expected June 2024
Journals: *Stanford Law Review* (Vol. 76: Articles Editor, Vol. 75: Member Editor); *Stanford Technology Law Review* (Vol. 26: Senior Articles Editor, Vol. 25: Member Editor)

**University of Virginia** Charlottesville, VA
B.A. in Political Philosophy, Policy, and Law; Slavic Languages and Literature; minor in English, May 2021
Honors: High Distinction in Political Philosophy, Policy, and Law, Dean's List (all eligible semesters), Raven Society; Pertzoff Prize in Russian Studies; Echols Scholar
Thesis: "The Legal Age of Majority and Equal Citizenship"
Activities: Jefferson Literary and Debating Society; Program on Constitutionalism and Democracy; UVA in Oxford, London School of Economics International Summer School; Books Behind Bars (Student Facilitator)

## EXPERIENCE

**U.S. Department of State, Office of the Legal Advisor**, Washington, DC *Extern*, September – December 2023

**Akin Gump Strauss Hauer & Feld LLP**, Los Angeles, CA *Summer Associate*, June – August 2023

**Stanford Law School**

**Research Assistant, Professor Erik Jensen** *Research Assistant,* April 2023- present
Edited draft Rwandan law textbook. Worked with American and Rwandan legal academics. Assisted in bringing book to publication.

**Religious Liberty Clinic** *Clinic Student*, April – June 2023
Counseled client on religious liberty issues related to access to education. Wrote 9th Circuit reply brief in *Guardado v. State of Nevada* (litigation on behalf of former inmate racially discriminated against and prevented from practicing his religion). Developed advocacy plan to advance religious accommodations awareness in healthcare settings. Researched religious liberty and other legal issues and worked closely with teams and partners in completion of all these projects.

**Trends in Global Judicial Reform Policy Lab** *Teaching/Research Assistant*, June 2022 – present
Conducted literature review on judicial vetting. Scheduled and managed visits of four foreign Supreme or Constitutional Court Justices to Stanford. Wrote syllabus and managed logistics of weekly seminar with 18 students. Assisted with design of research questionnaire and managed research trip to Bogota to interview judges. Oversaw creation of website to present findings.

**Supreme Court of Rwanda**, Kigali, Rwanda *Law Clerk to the Chief Justice*, June – August 2022
Researched virtual criminal hearing guidelines in jurisdictions worldwide. Served on committee and wrote draft remote hearing guidelines for judiciary of Rwanda. Drafted memorandum on comparative transitional justice responses to mass atrocities.

**Charlottesville Debate League**, Charlottesville, VA *Outreach Chair/Teacher*, September 2018 – May 2021
Taught public forum debate and impromptu speaking to middle schoolers. Implemented program by working with administrators in local school system. Adapted program to be conducted virtually during COVID.

**University of Virginia**

**Echols Program** *Advisory Committee*, March 2019 – May 2021
Created and distributed programming for admitted students, including panels, tours, and personalized visits; transitioned programming to be virtual during COVID. Managed student team and social media. Served on Echols Council and on Advisory Board with faculty, staff, students, and alumni governing long-term future of program. Served as Head Ambassador and Chair of Recruitment from May 2019 through April 2021.

**Maxine Platzer Lynn Women's Center Free Legal Clinic** *Legal Intern*, May – August 2020
Provided administrative support to attorneys in free legal consultations on issues including contract, family, and property law. Scheduled clients and attorneys by phone and email. Adapted clinic to be virtual during COVID and provided COVID-specific legal resources.

**Book Traces Project** *Managing Research Assistant*, October 2018 – May 2019
Researched and compiled data on library collections. Organized site visits, handled rare books, and led research trips.

## ADDITIONAL INFORMATION

Languages: French (intermediate low); Russian (advanced low);
Interests: travel, particularly cross-country road trips; concerts; cooking

# KATHERINE VITI

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## RECOMMENDERS

Professor Diego Zambrano
Stanford Law School
(650) 721-7681
dzambran@law.stanford.edu

Professor James Sonne
Stanford Law School
(650) 723-1422
jsonne@law.stanford.edu

Professor Elizabeth Reese
Stanford Law School
(505) 263-5021
ereese@law.stanford.edu

## REFERENCES

Erik Jensen
Stanford Law School/Liaison to Supreme Court of Rwanda
(650) 725-4287
egjensen@stanford.edu

Leigh Ann Carver
Maxine Platzer Lynn Women's Center at the University of Virginia
(434) 981-8416
lac4g@virginia.edu

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

## Law Unofficial Transcript

**Name : Viti,Katherine L**
**Student ID : 06603564**

Print Date: 06/09/2023

**-------- Academic Program --------**

Program : Law JD
09/20/2021 : Law (JD)
Plan
Status Active in Program

**-------- Beginning of Academic Record --------**

**2021-2022 Autumn**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 201 | CIVIL PROCEDURE I | 5.00 | 5.00 | H | |
| Instructor: | | Zambrano, Diego Alberto | | | | |
| LAW | 205 | CONTRACTS | 5.00 | 5.00 | H | |
| Instructor: | | Nyarko, Julian | | | | |
| LAW | 219 | LEGAL RESEARCH AND WRITING | 2.00 | 2.00 | P | |
| Instructor: | | Handler, Nicholas A | | | | |
| LAW | 223 | TORTS | 5.00 | 5.00 | P | |
| Instructor: | | Mello, Michelle Marie<br>Studdert, David M | | | | |
| LAW | 240J | DISCUSSION (1L): RELIGION, IDENTITY AND LAW | 1.00 | 1.00 | MP | |
| Instructor: | | Sonne, James Andrew | | | | |

LAW TERM UNTS: 18.00 LAW CUM UNTS: 18.00

**2021-2022 Winter**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 203 | CONSTITUTIONAL LAW | 3.00 | 3.00 | H | |
| Instructor: | | Meyler, Bernadette | | | | |
| LAW | 207 | CRIMINAL LAW | 4.00 | 4.00 | P | |
| Instructor: | | Weisberg, Robert | | | | |
| LAW | 224A | FEDERAL LITIGATION IN A GLOBAL CONTEXT: COURSEWORK | 2.00 | 2.00 | P | |
| Instructor: | | Valeska, Tyler Breland | | | | |
| LAW | 807E | POLICY PRACTICUM: GLOBAL JUDICIAL REFORMS | 2.00 | 2.00 | MP | |
| Instructor: | | Zambrano, Diego Alberto | | | | |
| LAW | 7846 | ELEMENTS OF POLICY ANALYSIS | 1.00 | 1.00 | MP | |
| Instructor: | | Brest, Paul<br>Herman, Luciana Louise<br>MacCoun, Robert J | | | | |

LAW TERM UNTS: 12.00 LAW CUM UNTS: 30.00

**2021-2022 Spring**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 217 | PROPERTY | 4.00 | 4.00 | P | |
| Instructor: | | Thompson Jr, Barton H | | | | |
| LAW | 224B | FEDERAL LITIGATION IN A GLOBAL CONTEXT: METHODS AND PRACTICE | 2.00 | 2.00 | P | |
| Instructor: | | Valeska, Tyler Breland | | | | |
| LAW | 5013 | INTERNATIONAL LAW | 4.00 | 4.00 | P | |
| Instructor: | | Weiner, Allen S. | | | | |
| LAW | 7013 | GENDER, LAW, AND PUBLIC POLICY | 3.00 | 3.00 | P | |
| Instructor: | | Russell, Margaret Mary | | | | |

LAW TERM UNTS: 13.00 LAW CUM UNTS: 43.00

**2022-2023 Autumn**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 3504 | U.S. LEGAL HISTORY | 3.00 | 3.00 | H | |
| Instructor: | | Ablavsky, Gregory R | | | | |
| LAW | 5044 | THIRD WORLD APPROACHES TO INTERNATIONAL LAW, BORDERS, AND MIGRATION | 2.00 | 2.00 | H | |
| Instructor: | | Achiume, Emily T | | | | |
| LAW | 7030 | FEDERAL INDIAN LAW | 3.00 | 3.00 | P | |
| Instructor: | | Reese, Elizabeth Anne | | | | |
| LAW | 7036 | LAW OF DEMOCRACY | 3.00 | 3.00 | P | |
| Instructor: | | Persily, Nathaniel A. | | | | |

LAW TERM UNTS: 11.00 LAW CUM UNTS: 54.00

**2022-2023 Winter**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 400 | DIRECTED RESEARCH | 3.00 | 0.00 | | |
| Instructor: | | Spaulding, Norman W. | | | | |
| LAW | 2401 | ADVANCED CIVIL PROCEDURE | 3.00 | 3.00 | P | |
| Instructor: | | Zambrano, Diego Alberto | | | | |
| LAW | 5801 | LEGAL STUDIES WORKSHOP | 1.00 | 1.00 | MP | |
| Instructor: | | Meyler, Bernadette | | | | |
| LAW | 7001 | ADMINISTRATIVE LAW | 4.00 | 4.00 | P | |
| Instructor: | | Freeman Engstrom, David | | | | |


Worksheet - For office use by authorized Stanford personnel Effective Autumn Quarter 2009-10, units earned in the Stanford Law School are quarter units. Units earned in the Stanford Law School prior to 2009-10 were semester units. Law Term and Law Cum totals are law course units earned Autumn Quarter 2009-10 and thereafter.

Leland Stanford Jr. University
School of Law
Stanford, CA 94305
USA

## Law Unofficial Transcript

**Name : Viti,Katherine L**
**Student ID : 06603564**

LAW TERM UNTS: 8.00 LAW CUM UNTS: 62.00

**2022-2023 Spring**

| Course | | Title | Attempted | Earned | Grade | Eqiv |
|---|---|---|---|---|---|---|
| LAW | 918A | RELIGIOUS LIBERTY CLINIC: PRACTICE | 4.00 | 0.00 | | |
| Instructor: | | Huq, Zeba Azim<br>Sonne, James Andrew | | | | |
| LAW | 918B | RELIGIOUS LIBERTY CLINIC: CLINICAL METHODS | 4.00 | 0.00 | | |
| Instructor: | | Huq, Zeba Azim<br>Sonne, James Andrew | | | | |
| LAW | 918C | RELIGIOUS LIBERTY CLINIC: CLINICAL COURSEWORK | 4.00 | 0.00 | | |
| Instructor: | | Huq, Zeba Azim<br>Sonne, James Andrew | | | | |

LAW TERM UNTS: 0.00 LAW CUM UNTS: 62.00

END OF TRANSCRIPT

James Sonne
Professor of Law
Director, Religious Liberty Clinic
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-1422
jsonne@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend for a clerkship with you one of my standout clinic students from the spring 2023 quarter, Katherine Viti. Katherine is bright and curious, an excellent researcher and writer, and a team player who takes ownership to ensure first-rate work. She is also thoughtful and engaging, with a heart for the vulnerable and a fun sense of humor. Katherine would make a great law clerk.

I direct Stanford's Religious Liberty Clinic. Like any law school clinic, we teach students through representation of real clients in live disputes. But Stanford is unique in that our students enroll in clinic on a full-time basis; in other words, it is the only class a participating student takes in a given academic quarter. As for subject matter, we find that religious liberty offers unique opportunities that enable students to help clients in need while expanding their skills in a diverse and deeply human area—no matter their own political or ideological perspective.

Katherine was a full-time student in our clinic during the spring 2023 quarter. In clinic, Katherine was assigned several projects. The most demanding was an appellate reply brief involving the right of an inmate to access group religious practices at his prison. The case involves complex and delicate questions of constitutional law and procedure, and Katherine tackled the most thorny of these. Katherine mastered the (rather complicated) record, and researched and wrote the core sections of the brief to great effect. She also worked extremely hard, and was the reliable leader of the team to make sure everything was done right and well.

Katherine's other core project was an advocacy matter for a Jewish family navigating a religious accommodation request for their children at a local school. Katherine's work once again included excellent research and written advocacy, as well as thoughtful and comprehensive client counseling—with a keen eye to serving the client's goals within the range of options. With Katherine's foundational work, we are optimistic about our chances moving forward.

In seminar and clinic rounds sessions, Katherine also consistently demonstrated intellectual curiosity, academic and professional excellence, and a can-do attitude. She was an active and reflective participant, who enjoyed the respect of her peers. Katherine was particularly strong in conversations across difference, where she displayed the warmth and respectful dialogue we seek to foster in our clinic. Katherine was also previously enrolled in my first-year reading group on religion and the profession of law. She was a standout in that class as well.

I hope you have the chance to interview Katherine. Please let me know if you have questions or need more information. Thank you.

Sincerely,

/s/ James Sonne

Diego A. Zambrano
Assistant Professor of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-721-7681
dzambrano@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with the greatest enthusiasm that I write to recommend Katherine Viti for a clerkship in your chambers. Katherine has been a fabulous student at Stanford Law School, displaying exceptional research and writing skills, independent thinking, and *ultra-competence*. I want to hammer this aspect of Katherine's legal package again and again: she is simply extremely on top of her work, carrying a full load of classes, serving as a teaching assistant, and as an editor of the *Stanford Law Review*. And she excels at all of these activities. Again, she exemplifies ultra-competence and is one of those students who can seemingly get everything done much quicker than her classmates because she is an incredibly hard worker. As her transcript shows, she has a solid record of several honors grades, including in Constitutional Law and my class of Civil Procedure. Even more, Katherine is heavily involved in activities related to international law. This is a terrific package. And it comes from a person with am interesting background in rural Virginia. I can attest to Katherine's accomplishments because I've personally seen her intelligence, determination, grit, and ability across a range of areas, including in her exam, class participation, and as a Teaching Assistant. I am convinced that Katherine would be a brilliant clerk.

Let me say something about Katherine's contributions as an *ultra-competent* Teaching Assistant. Last fall, I began planning the latest iteration of a comparative constitutional seminar on Global Judicial Reforms—a comparative survey of the most recent successful wave of judicial reforms around the world. As soon as I decided that, I knew Katherine would be at the top of my list for TAs. I felt that way not only because of her exceptional performance in my Civ Pro class, but also because she was one of the most thoughtful, professional, and committed students. Moreover, she had been the *best student* in the prior iteration of the policy lab, producing a magisterial research project on judicial reforms in Ecuador. She went way beyond what other students did, conducting a series of interviews of Ecuadorian legal actors, and writing a superb research paper.

As a TA, Katherine was simply impressive—always on top of assignments, available for students, deeply engaged with the material, and just brilliant. For example, even before the class started, I wanted to do a literature review and survey of previous works on the vetting of judges around the world. What, exactly, do countries do to verify competence and integrity of judicial candidates? To do so, I asked Katherine to compile anything she could find. Katherine's work product was excellent, heavily researched, clearly written, and raised questions that had not occurred to me. Katherine told me she loved digging into this material. She explored several databases in-depth and illuminated the field in ways I had not considered. Then, throughout our Policy Practicum, Katherine was extremely competent and well-liked by the students. She became the perfect TA in every way, preparing classes, inviting guest speakers, supervising the work of other students, and being an all-around aid to my teaching. I could not have taught that class without her.

Let me say another word about Katherine's *ultra-competence*—she managed to organize a series of speaking engagements by foreign judges, help me plan a trip to Colombia with our seminar, and serve as articles editor at the *Stanford Law Review*. She is simply one of those students who can get anything done in time. Of course, my first impression of Katherine's *ultra-competence* came from our Civil Procedure class. As you may know, Civil Procedure provides instruction in some of the most important and foundational concepts in our litigation system. I therefore have a unique view of Katherine's aptitude for litigation and the way our judiciary operates. I can tell you without hesitation that she is a superb law student. Katherine's exam was outstanding, placing at the top of the class, easily winning her an Honors grade and was a contender for the best exam in the class. Katherine was one of the only students to successfully spot all important issues and untangle the complex web of facts and arguments that I presented in the exam. Her exam exemplified Katherine's clear and analytical writing.

Setting aside her obvious high level of competence, let me also say something about Katherine's professionalism. She is easy to talk to, professional and respectful, but also interes*ting* and interes*ted* in the law. She is collegial and a wonderful person to have in a classroom. Always on time and always respectful. She is an incredibly hard worker. A quick look at her CV exhibits a dozen activities that she has been involved in over the last two years.

Katherine's personality and professional package is rounded out by a deep devotion to international legal issues. Katherine spent her first summer of law school in Rwanda, designing a new regime for the use of legal technology in Rwandan courts. She spent her Spring Break with our class in Colombia, interviewing dozens of judges. And that's just the beginning. Katherine's CV exhibits this: major in Russian, research assistant for Professor Erik Jensen on Rwandan legal issues, and several classes on international law. When I run into Katherine in the halls, we can debate about international law in the context of the Russia-Ukraine war, or we can move on to discuss recent separation of powers clashes in South America.

I think Katherine has built such a love for international issues because her background is so deeply American. She's fundamentally a Virginian, hailing from a rural area in the state. She attended UVa for her undergraduate studies, where she maintained a strong connection to her family in Virginia. I've spoken with her about her weak academic performance in the Spring Quarter of her 1L year—she told me it was due to her grandfather's death in a car accident. I think that quarter was not representative of the excellent work I have come to expect from her. Katherine's profoundly American/Virginian background instilled in her the foundational value of *hard work*. I've seen her as a TA and student and you can trust me when I say this: she is fully devoted to anything she works on.

Let me say a final word about Katherine: she is fundamentally pragmatic and non-ideological. Because she grew up in a conservative family but came to embrace different values, she has maintained an open mind across political divisions. I have found that she is very reasonable, open to disagreement, fundamentally level-headed, and committed to hearing from people she disagrees with. Yes, she is smart. But, more importantly, she is a *smart listener*.

The bottom line is this: Katherine is a highly talented student; deeply passionate about international legal work; professional and intelligent; as well as the hardest worker you will find. I am confident she would be a first-rate clerk in your chambers. Without hesitation, I give her my strongest recommendation.

Sincerely,

/s/ Diego A. Zambrano

Diego Zambrano - dzambrano@law.stanford.edu

StanfordLawSchool

**JENNY S. MARTINEZ**
Richard E. Lang Professor of Law and Dean

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# Stanford Grading System

Dear Judge:

Since 2008, Stanford Law School has followed the non-numerical grading system set forth below. The system establishes "Pass" (P) as the default grade for typically strong work in which the student has mastered the subject, and "Honors" (H) as the grade for exceptional work. As explained further below, H grades were limited by a strict curve.

| | | |
|---|---|---|
| **H** | Honors | Exceptional work, significantly superior to the average performance at the school. |
| **P** | Pass | Representing successful mastery of the course material. |
| **MP** | Mandatory Pass | Representing P or better work. (No Honors grades are available for Mandatory P classes.) |
| **MPH** | Mandatory Pass - Public Health Emergency* | Representing P or better work. (No Honors grades are available for Mandatory P classes.) |
| **R** | Restricted Credit | Representing work that is unsatisfactory. |
| **F** | Fail | Representing work that does not show minimally adequate mastery of the material. |
| **L** | Pass | Student has passed the class. Exact grade yet to be reported. |
| **I** | Incomplete | |
| **N** | Continuing Course | |
| **[blank]** | | Grading deadline has not yet passed. Grade has yet to be reported. |
| **GNR** | Grade Not Reported | Grading deadline has passed. Grade has yet to be reported. |

In addition to Hs and Ps, we also award a limited number of class prizes to recognize truly extraordinary performance. These prizes are rare: No more than one prize can be awarded for every 15 students enrolled in a course. Outside of first-year required courses, awarding these prizes is at the discretion of the instructor.

* The coronavirus outbreak caused substantial disruptions to academic life beginning in mid-March 2020, during the Winter Quarter exam period. Due to these circumstances, SLS used a Mandatory Pass-Public Health Emergency/Restricted Credit/Fail grading scale for all exam classes held during Winter 2020 and all classes held during Spring 2020.

For non-exam classes held during Winter Quarter (e.g., policy practicums, clinics, and paper classes), students could elect to receive grades on the normal H/P/Restricted Credit/Fail scale or the Mandatory Pass-Public Health Emergency/Restricted Credit/Fail scale.

The five prizes, which will be noted on student transcripts, are:

- the Gerald Gunther Prize for first-year legal research and writing,
- the Gerald Gunther Prize for exam classes,
- the John Hart Ely Prize for paper classes,
- the Hilmer Oehlmann, Jr. Award for Federal Litigation or Federal Litigation in a Global Context, and
- the Judge Thelton E. Henderson Prize for clinical courses.

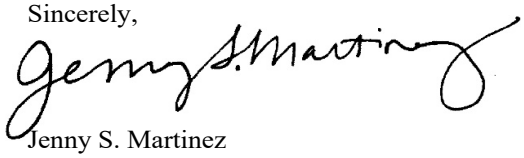
Unlike some of our peer schools, Stanford strictly limits the percentage of Hs that professors may award. Given these strict caps, in many years, *no student* graduates with all Hs, while only one or two students, at most, will compile an all-H record throughout just the first year of study. Furthermore, only 10 percent of students will compile a record of three-quarters Hs; compiling such a record, therefore, puts a student firmly within the top 10 percent of his or her law school class.

Some schools that have similar H/P grading systems do not impose limits on the number of Hs that can be awarded. At such schools, it is not uncommon for over 70 or 80 percent of a class to receive Hs, and many students graduate with all-H transcripts. This is not the case at Stanford Law. Accordingly, if you use grades as part of your hiring criteria, we strongly urge you to set standards specifically for Stanford Law School students.

If you have questions or would like further information about our grading system, please contact Professor Michelle Anderson, Chair of the Clerkship Committee, at (650) 498-1149 or manderson@law.stanford.edu. We appreciate your interest in our students, and we are eager to help you in any way we can.

Thank you for your consideration.

Sincerely,



Jenny S. Martinez
Richard E. Lang Professor of Law and Dean

Updated May 2020

Elizabeth Reese
Assistant Professor of Law
559 Nathan Abbott Way
Stanford, California 94305-8610
650-723-4185
ereese@law.stanford.edu

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation that you hire Katherine Viti, Stanford Law JD24, for a clerkship position in your chambers. Katherine is smart, dedicated, and incredibly focused. She will make a wonderful clerk.

I first met Katherine when she enrolled in my Federal Indian Law class at Stanford Law School. Right away, it was clear that she was incredibly engaged in the course. She had fantastic comments in class and was consistently well-prepared. She stopped by my office hours a few times to discuss the material. It was clear to me that Katherine's brain is always going. She is very analytical and passionate at the same time. She brings an energizing kind of focus to the way she asks questions about the material. It's an infectious energy and love for the law and all the reasons that it matters. I have no doubt that that kind of energy, focus, and enthusiasm will be an asset in any clerkship chambers.

Beyond her work in my class, I have met with Katherine to talk about both her writing projects and my own. She decided to write a research paper for her U.S. legal history course on the intersection of indigenous law issues and international borders. She reached out to me to talk about the project, and our conversation was fantastic. Her questions were thoughtful, and she approached the topic with a noteworthy amount of both humility and infectious curiosity. It was during this conversation that I learned that Katherine is interested in legal academia. She dreams of one day being a civil procedure professor. This seems to fit perfectly. She has the kind of excitement combined with an analytical disposition that makes some of the best civil procedure professors so good at their job. It's that infectious energy for how a system works, why it works, and the intricacies as well as rationales behind such systems.

I have also gotten the opportunity to work with Katherine on some of my own writing. She was assigned as the primary editor of a piece of mine with the *Stanford Law Review*. It was a fortuitous pairing, since Katherine is not only a joy to work with, but it also allows me to speak to her ability to provide thoughtful and careful feedback on writing and legal ideas. She has worked incredibly hard on the piece, and I was so impressed by the comments she provided. I agreed with most of them, which is truly a compliment! She also expressed her critical feedback in such a careful but clear way—exactly the kind of thing that will make her excellent at writing bench memos.

I strongly encourage you to hire Katherine. She will be an asset to your chambers—an injection of excitement and focus. I trusted her to edit my writing, and she has continually impressed me with not only her writing edits but also her substantive feedback. If you decide to trust her with your writing, I have no doubts you will feel the same.

Sincerely,

/s/ Elizabeth Reese

**KATHERINE VITI**
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## WRITING SAMPLE

I prepared this document as part of my work clerking for Chief Justice Ntezilyayo of the Supreme Court of Rwanda. The research assignment was to investigate international best practices for virtual hearings, particularly in the criminal context. After drafting this memo summarizing my research and the scope of possible issues to consider, I worked on a committee with the Director of IT for the Rwandan Judiciary and a lower court judge to develop these recommendations into text to be inserted into the Rwandan civil code governing the operation of the judiciary. Several months after my time at the Court ended, this document was issued summarizing the current state of technology use in the Rwandan judiciary for the public. I realize that this memo is a very non-traditional writing sample, so I hope the context provided here is helpful in evaluating it as a document. I prepared this document entirely on my own, and I am submitting it with the permission of Chief Justice Ntezilyayo.

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Katherine Viti
Research Memo: Main Challenges Pertaining to Due Process and Remote Court Hearings for Criminal Matters in Rwanda
Prepared for Chief Justice Ntezilyayo
June 10, 2022

**Introduction:**

Many countries adopted some virtual hearings as part of their emergency response to the COVID-19 Pandemic, beginning in 2020. Initially, these measures were only stopgaps, but there are advantages to remote hearings that make them attractive for continued use. These advantages include:

- Increased ease, efficiency, and effectiveness in dealing with transnational crime through increased international cooperation
- Shielding sensitive victims and witnesses, both for their personal security and to prevent their re-traumatization
- Transparency and increased public access to the justice system (if proceedings are recorded or available in real time to the public)
- Increased speed and efficiency in access to justice, particularly in contexts where speed is critical (such as domestic violence and child welfare)
- Overcoming geographical access to justice barriers within a nation (so witnesses don't have to engage in difficult/hard/expensive travel to access the court system)

Rwanda has long recognized the advantages of remote hearings and has been using them in some form since around 2010. However, particularly in the criminal context, where I focus here, there are serious concerns with conducting remote hearings. These concerns include:

- Ensuring the defendant's due process rights are upheld, particularly regarding adequate and confidential access to counsel before, during, and after proceedings
- Concerns about witnesses, victims, or defendants testifying from unsafe or coercive environments such that it alters their testimony (such as when testifying from prison, in a public place, or in a home shared with an abuser)
- Technology access issues for testifying individuals, including both the relevant devices and internet access
- Difficulty presenting complex evidence over technology so as to allow all involved to view it properly (such as exhibits, large documents, physical evidence, etc)
- Difficulty ensuring security and maintaining order in the proceeding
- Difficulty accessing digital proceedings for people who are illiterate, disabled, or do not speak the language the proceeding is in

Rwanda can mitigate some of these concerns by adopting a nationwide policy regarding the use of remote hearings in criminal matters. To be clear, Rwanda has already implemented some of these recommendations, but I am including them all here to be as comprehensive as possible. This policy should include the answers to some key questions below about the scope and scale at which the use of remote procedures is desirable, as well some best practices for the

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actual conduct of the hearings themselves. These questions and best practices should include the following:

- What kinds of hearings should be done virtually? What kinds should remain only in-person?
- Should all hearings of this type be virtual, or should parties have to request it?
    - Should the accused have to consent in order for the hearing to be virtual? What if the witness requests a virtual hearing?
- Should hearings be completely virtual, or only partially virtual, where one party appears virtually and the rest appear in person?
- Best practices regarding technology: the judiciary should create a protocol addressing:
    - How to test the technology in advance of the hearing
    - What to do if the technology fails during the hearing, including common troubleshooting fixes, the role of any IT staff that might be available, or when to reschedule the hearing
    - How the technology will keep the hearing secure, including issues of unauthorized recording and of public access to the relevant kinds of hearings
    - How to use technology to present evidence
    - How the technology will interact with the pre-existing e-court system
    - When audio vs. video technology is appropriate
- Best practices for judges regarding:
    - How to use the technology
    - How to maintain order/sanction bad behavior in a digital courtroom
- Best practices for prisons regarding:
    - How to ensure prisoners have adequate, private interaction with counsel before, during, and after their hearing
    - How to minimize the coercive nature of the background prison environment during the hearing and provide some privacy
    - Technology maintenance and access
- Handbook for prosecutors to distribute to victims/witnesses (particularly women, children, and other vulnerable parties) that clearly explains:
    - In which circumstances it is possible for them to appear remotely and how they can request to do so
    - How to log on and access the hearing
    - Where to access the technology necessary for the hearing
    - How their role in the hearing will work
- Clear advertisement to the public regarding whether hearings are accessible and how to access them

This analysis of the core questions and best practices was developed by looking at similar work done by jurisdictions around the world, including in various US states, the EU, Australia, South Africa, Nigeria, and countries of the Middle East and North Africa. While Rwanda may face more logistical and resource-based challenges than some of the nations whose example has been considered, it is important to note that no jurisdiction I read about has resolved the resource issues called up by virtual hearings, including particularly those surrounding citizens' access to

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the technology necessary to participate. In fact, based on my conversations with Fred Gashemeza,[1] Rwanda is ahead of the game in implementing many of these solutions, particularly in regard to the actual technology infrastructure.

To deal with the resource challenges, I recommend maintaining a narrower scope of remote hearings, and scaling up as access to technology improves, so as to be able to focus on building a procedure that works well and respects the rights and roles of every stakeholder involved. The citizen technology access issue is one that many branches of government and civil society are ultimately invested in resolving and might be an opportunity for the judiciary to partner with other parts of society or to create international partnerships, whereas the due process and justice issues are essentially legal and can only be dealt with by the judiciary. Therefore, the judiciary should focus its resources on the issues that are uniquely within its purview to resolve, and search for partners to resolve issues that affect other aspects of society.

This report functions by progressing systematically through the series of questions and issues to consider in setting up a system for virtual criminal hearings. In creating this progression, I relied heavily on guidance provided by the UN.[2] As I address each issue in turn, I will explain how a different jurisdiction has handled that question, how Rwanda has handled or is handling it, and make recommendations for the future.

**Developing Recommended Best Practices for Rwanda:**

I. Ensure Procedures Comply with In-Person Due Process Requirements from Rwanda's Overall Governing Law

In considering best practices to adopt for Rwanda, UN Peacekeeping documentation[3] recommends that countries ensure that their constitutions and procedural laws allow for virtual hearings (or at least do not mandate in-person appearances or contain any other requirements that can only be fulfilled physically). In some countries in the Middle East and North Africa (MENA), nations are also trying to take into account their obligations under the International Covenant on Civil and Political Rights (ICCPR).[4] The primary obligations at issue under the ICCPR are those under Article 9 (the right to be free from arbitrary arrest and detention) and Article 14 (the right to a fair trial).[5] In Egypt, like in Rwanda, remote hearings are often used in the pretrial detention phase. Advocates in Egypt raised concerns regarding "depriv[ing] detainees of the regular connectivity to the outside world" that goes along with attending hearings in person, and reforms to Egypt's process continue.[6] Morocco and Lebanon have both had major technology issues in the implementation of remote hearings; in Lebanon sometimes the

[1] Mr. Gashemeza is the Director of IT for the Judiciary of Rwanda.
[2] Justice and Corrections Service, U.N. Office of Rule of Law and Security Institutions, Department of Peace of Operations, Remote Hearing Toolkit (2020), https://peacekeeping.un.org/sites/default/files/unitar-orolsi_remote_hearing_toolkit_2020.pdf.
[3] *Id* at 9.
[4] Mai El-Sadany, Madeleine Hall, & Yasmin Omar, *Remote Hearings, Detention, and the Pandemic in MENA*, TAHRIR INSTITUTE FOR MIDDLE EAST POLICY (Apr. 23, 2021), https://timep.org/commentary/remote-hearings-detention-and-the-pandemic-in-the-mena-region/.
[5] *Id.*
[6] *Id.*

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connections are so bad that the judge calls in on a mobile phone.[7] These tech issues create real due process violations that threaten the rights protected under the ICCPR.

The European Union is skeptical of the practice of remote hearings entirely because of these due process concerns. The EU has significant additional human rights protections built into it, including rigorous protections for the accused. Concerns raised by European scholars about remote hearings include the problems experienced by the MENA countries, as well as additional concerns about the way in which in-person hearings and testimony better enable hearings to serve their fact-finding purpose. Body language and other behavioral cues that provide important information during hearings are much harder, if not impossible, to judge from a remote hearing, and this lack of physical information is of great concern to Europeans.[8] Additionally, the physical courtroom projects "a certain spatial materiality of justice" that is important to defendants' feeling of having their day in court, as well as to the proceedings themselves.[9] Furthermore, the EU is very concerned about how to measure judicial outcomes, and there is concern about developing metrics to assess the success of remote hearings.[10]

In Rwanda, these concerns are still relevant, but more attention should be paid to the obligations Rwanda owes its criminal defendants under its own internal criminal procedure code. Rwanda has been conducting some remote hearings for many years now, but considering the Law Relating to Criminal Procedure's requirements may allow bounds to be put on what kinds of hearings can and cannot be conducted online.[11] Certain aspects of criminal investigations seem to require an in-person component to the proceedings, such as the requirement in Articles 18, 51, and 72[12] for witnesses to fingerprint their statements after giving them, but these requirements are outside the scope of consideration for actual hearings. However, they indicate that there might be some difficulty in making the process entirely remote. Regarding requirements for hearings that may require a judge or the court to be in person in some capacity, Article 76 requires a judge at a pretrial detention hearing "to consider the living conditions and the health of the accused person."[13] Rwanda has been using remote hearings for pretrial detention for a long time, and they may be the most useful context for remote hearings, by actually accelerating the process and therefore protecting the health and wellbeing of the accused person.

Remote hearings must be sure to comply with Article 125, which requires the preliminary hearing to be in camera (private).[14] This requirement presents its own challenges online, mostly regarding privacy. Mr. Gashemeza told me that Rwanda does its best to ensure privacy by distributing links to hearings on an as-needed basis, but security remains a challenge. Article 125 does however explicitly allow audio-visual testimony if a person cannot be present at the hearing, and Article 130 explicitly allows for electronic hearings, so moving in this direction is legally sanctioned.[15] Another potential security risk comes from the provisions of Article 136,

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[7] *Id.*
[8] Kresimir Kamber, *The Right to a Fair Online Hearing*, 22 HUM. RTS. L. REV. 1, 9 (2022).
[9] *Id*. at 4.
[10] *Id.* at 10. For an example of the EU's attempt to measure the success of their judicial digitization efforts, see 2022 EU Justice Scoreboard, EUROPEAN COMMISSION, 31-36, https://ec.europa.eu/info/sites/default/files/eu_justice_scoreboard_2022.pdf.
[11] Law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure (Rwanda).
[12] *Id*.
[13] *Id*.
[14] *Id.*
[15] *Id.*

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which require anyone wishing to create audio or visual recordings of hearings to request permission in writing at least 48 hours in advance.[16] As the technology available to log into the hearings expands, the judiciary will need to think about how to prevent people from illegally recording hearings from the other end in order to comply with the Law on Criminal Procedure. Additionally, Article 176 nearly always requires an "in person" appearance in order to have the privilege of appeal in cases where the judgment at first instance was passed down in absentia.[17] It is unclear whether remote hearings would qualify as "in person" to satisfy this requirement, and furthermore, policies would need to be created to distinguish people truly in absentia from those having technology issues.

Overall, the use of remote hearings is in compliance with Rwandan Criminal Procedure, though the Code highlights areas over which procedure should be cautious to respect the rights of defendants.

## II. Choosing the Kind of Hearings to Hold Remotely

Rwanda should also consider what kind of hearings it makes sense to hold remotely. Rwandan practice already matches US practice in holding hearings with prisoners, including pre-trial detention hearings, remotely. There might be other contexts in which the urgency of the facts makes remote hearings a good choice, such as in domestic violence and child protection cases.[18] The UN recommends the use of remote hearings in transnational criminal contexts, because of the logistical and jurisdictional difficulty of these cases, and has published a long handbook about how best to conduct these hearings that might be of interest.[19] Rwanda used some similar remote procedures in the International Criminal Tribunal for Rwanda (ICTR), mostly to allow witnesses who could not or did not want to appear in person to testify, as well as for witness protection and to avoid logistical problems associated with transporting certain detainees.[20] Additionally, there are contexts where remote hearings do not make sense, including those where a relevant party has a disability, is illiterate, or is otherwise prohibited from making full use of the technology. Rwanda should also make practical decisions about when to do remote hearings based on which levels of courts have the technology infrastructure to conduct remote hearings. In issuing guidance about which hearings should be held remotely, Rwanda should balance which proceedings will be easiest to run remotely, versus which kinds of proceedings will be best done in the interest of justice remotely.

The European Court of Human Rights has instituted a "counterbalancing factors" analysis in the EU, which weighs the increased difficulty for the defendant of making their case and exercising their rights in the virtual environment against the scale of protections for defendants enacted in that environment to determine what kinds of proceedings can be done remotely without violating the due process rights of criminal defendants.[21] Because of the importance of the criminal defendant himself making his case at trial, the suggestion behind this test is that the

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[16] *Id.*
[17] *Id.*
[18] *What Do We Know About Virtual Court Hearings?*, CASEY FAMILY LAW (July 14, 2020), https://www.casey.org/virtual-permanency-courts/.
[19] Manual on Videoconferencing: Legal and Practical Use in Criminal Cases, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2017), https://www.unodc.org/documents/organized-crime/GPTOC/GPTOC2/MANUAL_VIDEOCONFERENCING.pdf.
[20] *Id.* at 131.
[21] Kamber, *supra* note 8, at 12.

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physical presence of accused is far more important at trial level than appellate level, thus making appellate remote hearings more just under the scheme of rights in the European Union.[22] For example, in *Marcello Viola v. Italy*, the European Court of Human Rights ruled that the defendant's rights were adequately protected when he appeared at his appeal via video link from prison.[23] The defendant was connected to the mafia, and there were legitimate safety concerns that caused the Italian authorities to set up his appeal in this way, as well as sufficient protections for his rights built into the process.[24] When the ECHR has ruled that video hearings violate a defendant's due process rights, the cases have largely been against the Russian government, and turned on the defendant's complete lack of access to an attorney.[25]

The judiciary should also consider whether it makes sense to require the accused's consent to host certain hearings remotely, or whether remote hearings can be mandated. International practice on this is hugely mixed, and Rwanda would not have to answer one way or another. In South Africa, for example, online hearings require the accused's consent and the trial court's order, but witnesses can petition for it based on their safety concerns.[26] Rwanda could adopt a similar strategy, but also follow *Marcello Viola* and make remote hearings mandatory for prisoners at a certain security status.

## III. Optimizing Rwanda's Current Procedures

### Rwanda's Current and Future Technology

Rwanda has a significant amount of the technology infrastructure necessary for remote hearings already in place and has since well before the pandemic, in contrast with most of the world's jurisdictions. This infrastructure includes the IECMS system[27] to manage cases throughout different parts of the justice sector, as well as the various hardware VCF systems for videoconferencing that have been in use in certain designated courts and prisons for years. It also includes the ongoing efforts to expand broadband and device access throughout the country. Rwanda further relied on Skype during the pandemic to increase its digital capacity in an emergent capacity.

Mr. Gashemeza indicated to me that expanding the availability to VCF through a mobile app connected to the IECMS is a high priority, with a goal to make such access available to everyone who is connected to that platform—parties, advocates, all judges nationwide, investigative bodies, and all other concerned parties. This solution would be more resource-efficient than

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[22] *Id.* at 16. The rights of the accused in the EU are protected by Article 6 of the European Convention on Human Rights and are extensive.
[23] *Id.* at 17-18 (citing *Marcello Viola v. Italy*, App. No. 77633/16 (June 13, 2019), https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-194036%22]}. Note that the full decision is only available in French.).
[24] *Id.*
[25] *Id.* at 19-20.
[26] Fawzia Cassim, *The Accused's Right to Present: A Key to Meaningful Participation in the Criminal Process*, 38 COMPAR. & INT'L L. J. S. AFR. 285, 288 (July 2005).
[27] The Integrated Electronic Case Management System (IECMS) is used by the Rwandan Judiciary to manage their caseload. It was specifically designed by the Judiciary for this purpose. All Rwandan cases are filed via this system, and all documents are submitted electronically. It has specific portals for judges, lawyers, and parties. To read more about IECMS, see *Rwanda's Justice Sector Integrated Electronic Case Management System (IECMS)*, SYNERGY, https://www.synisys.com/featured-projects/rwandas-justice-sector-integrated-electronic-case-management-system-iecms/. For a demonstration of how ICEMS works, see the Rwandan Judiciary's YouTube tutorial for its use at https://www.youtube.com/watch?v=zmNTeAMy1OI.

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attempting to install VCF technology in all 190+ courtrooms across the country and could also take advantage of larger government and civil society initiatives to increase broadband and technology access throughout the country.

**Use and Problems of Technology for Remote Hearings in Other Jurisdictions**

Rwanda's current technology infrastructure for remote hearings is fairly good by international standards, as many countries did not have any digital judicial mechanisms until the COVID-19 pandemic. For example, Bangladesh implemented a very basic electronic case filing system as part of their pandemic response, while Rwanda had implemented the IECMS (which won international design awards) before the pandemic.[28] The other end of the spectrum is China, which has hugely digitized its judiciary since 2017 by introducing 24/7 entirely virtual courts in several cities that use virtual judges to make rulings on certain kinds of cases dealing with internet rights.[29] While this effort has been praised for its increased transparency, it has also been criticized as part of its authoritarian control over its population.[30] Other jurisdictions that pivoted to remote hearings abruptly include Nigeria, the United Kingdom, Australia, the United Arab Emirates and South Africa.[31] One study focused on Australia indicated that the primary evolution during the pandemic has been from AVL hearings (where one participant, generally a vulnerable witness or a prisoner, calls into a larger in-person hearing via an audio-visual link (AVL)) to fully remote hearings, where everyone is calling in.[32] Australia even engaged in complex litigation via fully remote hearings, whereas jurisdictions like South Africa, despite its judicial orders to pivot to remote hearings, struggled to implement them in practice.[33] Australia used nearly every known commercial videoconferencing platform, while other countries could not implement any. Some jurisdictions were also criticized for the scope of the decisions taken online, as Nigeria was when a court sentenced someone to death via a Zoom proceeding.[34] The United Arab Emirates is pivoting to run 80% of their litigation sessions remotely permanently after the pandemic,[35] and has used MeetMe and WebEx as its primary vehicles for remote hearings in both the criminal and civil contexts.[36]

While the resources available to nations matters in their ability to digitalize at their preferred speed, as one report about the digitalization of the judiciaries, primarily the e-case management

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[28] Aiman R. Khan, *The Law on E-judiciary Might Change Bangladesh Courts Forever*, BUS. STANDARD (May 21, 2020, 6:22 PM), https://www.tbsnews.net/thoughts/law-e-judiciary-might-change-bangladesh-courts-forever-84148.
[29] Bryan Lynn, *Robot Justice: The Rise of China's 'Internet Courts'*, VOA: LEARNING ENGLISH (Dec. 11, 2019), https://learningenglish.voanews.com/a/robot-justice-the-rise-of-china-s-internet-courts-/5201677.html.
[30] Jason Tashea, *How the U.S. Can Compete with China on Digital Justice Technology*, BROOKINGS: TECH STREAM (Oct. 25, 2021), https://www.brookings.edu/techstream/how-the-u-s-can-compete-with-china-on-digital-justice-technology/.
[31] M.M. Maya, President of the Supreme Court of Appeal, *Practice Direction: Supreme Court of Appeal Video or Audio Hearings During Covid-19 Pandemic*, SUPREME COURT OF APPEAL, SOUTH AFRICA (Apr. 29, 2020), https://www.supremecourtofappeal.org.za/index.php/2-uncategorised/46-practice-directions.
[32] Michael Legg & Anthony Song, *The Courts, the Remote Hearing, and the Pandemic: From Action to Reflection,* 44 UNIV. NEW S. WALES L.J., 126, 130-35 (2021).
[33] *Id.* at 144.
[34] *Coronavirus: Nigeria's Death Penalty by Zoom 'Inhumane'*, BBC (May 6, 2020), https://www.bbc.com/news/world-africa-52560918.
[35] Virtual Litigation, UNITED ARAB EMIRATES (July 7, 2021), https://u.ae/en/information-and-services/justice-safety-and-the-law/litigation-procedures/virtual-litigation.
[36] Remote Hearings, ABU DHABI JUDICIAL DEPARTMENT, https://www.adjd.gov.ae/en/Pages/RemoteCourtHearings.aspx.

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systems of the Baltic and Nordic states discusses, it is not the sole contributing factor.[37] For example, U.S. jurisdictions, despite the resources available in the US, have digitized case management systems at hugely varying levels, including 26 jurisdictions that as of 2015 could not identify how many cases had been filed and disposed of in a year in their jurisdictions.[38] The US did hold certain kinds of hearings remotely before the pandemic, mostly pretrial detention and immigration hearings.[39] Nevertheless, many organizations and jurisdictions issued emergency guidance about how to pivot courts to providing some services virtually, including the Joint Technology Committee of the Conference of State Court Administrators, the National Association for Court Management, and the National Center for State Courts;[40] the state of California;[41] and the state of Michigan.[42] US jurisdictions have overwhelmingly relied on the videoconferencing technology Zoom and have had issues regarding litigants' technology access that has resulted in several proceedings having to be re-tried.[43] The US faces significant technology access issues as well, particularly among low-income residents, who often lack broadband access and/or access to a device that allows them the full ability to participate in the hearing (i.e., they have no video, they are unable to share their screens or otherwise upload and show documentary evidence).[44] Similarly, attorneys in the US struggle to communicate with their clients when hearings are fully remote, and judges and juries struggle to assess the credibility of witnesses, as well as any relevant cognitive disabilities.[45]

Given these comparisons, Rwanda is not particularly far behind in terms of resources for remote hearings. Rwanda's legal infrastructure likely allows remote hearings to be conducted at a large scale with the proper procedures in place. In the next section, I make recommendations for how to implement those procedures.

## Recommendations for Non-Hardware Changes Rwanda Can Make to Uphold Due Process Through the Technology Used and Judges' Operation of It

### 1. Software Changes

This survey of international procedures and difficulties in remote hearings indicates the kinds of problems Rwanda should address when considering the technology it uses to conduct remote hearings. In order to optimize its use of technology to make remote hearings as secure and effective as possible, Rwanda should ensure that between VCF, the IECMS, and any other

[37] Frederik Waage & Hanne Marie Motzfeldt, *Digitalization at the Courts*, NORDIC CO-OPERATION (May 5, 2022), https://www.norden.org/en/publication/digitalization-courts.
[38] Tashea, *supra* note 30.
[39] Alicia L. Bannon & Douglas Keith, *Remote Court: Principles for Virtual Proceedings During the Covid-19 Pandemic and Beyond*, 115 NW. L. REV. 1875, 1882 (2021).
[40] *JTC Quick Response Bulletin: Strategic Issues to Consider When Starting Virtual Hearings* (Apr. 7, 2020), https://www.ncjfcj.org/wp-content/uploads/2020/04/COSA-NSCSC-and-NACM-JTC-Response-Bulletin-Strategic-Issues-to-Consider-When-Starting-Virtual-Hearings-.pdf.
[41] California Commission on Access to Justice, *Remote Hearings and Access to Justice: During Covid-19 and Beyond*, https://www.ncsc.org/__data/assets/pdf_file/0018/40365/RRT-Technology-ATJ-Remote-Hearings-Guide.pdf.
[42] State Court Administrative Office, *Remote Court Participation Chart*, MICHIGAN COURTS (May 11, 2020), https://drive.google.com/file/d/1q5oP82_vQOAznubgFiV-h9Jj5lUtCDlj/view.
[43] Avalon Zoppo, *Court Orders Do-Over After Tech Troubles Plague Zoom Trial*, LAW (May 9, 2022, 5:40 PM), https://www.law.com/nationallawjournal/2022/05/09/court-orders-do-over-after-tech-troubles-plague-zoom-trial/.
[44] Bannon & Keith, *supra* note 39 at 1889, 1891.
[45] *Id.* at 1883, 1885.

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technology in play, all parties involved have access to the ability to share and view documentary evidence and adequate assurance that proceedings are secure (such that no one can enter or record proceedings who is not authorized to do so). Additionally, judges should have power to control the proceedings. Necessary mechanisms include but are not limited to controls over the ability to record proceedings, the ability to control the entry and exit of participants from the meeting, and the ability to mute parties not meant to be speaking so as to maintain order within the proceeding.

**2. Protection of Attorney-Client Privilege and Communication Privacy Generally**

Additionally, there should be some procedure set up to allow parties who are meant to be able to communicate privately during the procedure to be able to do so. This aspect of remote hearings is critical to get right in criminal cases, because it maintains attorney-client privilege and upholds a defendant's due process right to counsel. The US has relied on text messaging between the attorney and the client or private Zoom breakout rooms for them, but the success of these procedures has been incomplete.[46] Most of the solutions for this problem so far, even those provided by the judiciary formally,[47] seem to be focused on how advocates prepare to go to trial virtually, rather than on systemic solutions to the problem of access to counsel.[48] The Rwandan Judiciary could build a procedure into its protocols for remote hearings to dictate what kind of technology should be used to facilitate this communication (for example, providing a phone to inmates where they can call their advocates while appearing remotely), or by scheduling breaks into the proceedings where advocates and clients can confer in private. This area is an example where technology might actually increase due process protections for criminal defendants, if it can be reliably used to increase their access to counsel beyond what it might have been in person. Conversely, it is also important to ensure that parties who are not supposed to communicate do not have access to each other during the hearing. For example, witnesses in domestic violence cases should be shielded from contact by their abuser, and the defendant-abuser should be prevented from using the technology to find out anything about them (such as their phone number, which was an issue in New York State family court in the United States).[49]

**3. Creating Protocols to Train Judges and Prison Officials in Advance of Hearings**

In addition to examining Rwandan technology to ensure it fulfills these criteria, the Judiciary should also create a protocol by which judges can be trained to use the technology, as well as be trained to check for and troubleshoot issues with other parties' use of the technology. While IT staff would be helpful, it would likely be more cost-effective to ensure all judges can do most of the IT troubleshooting necessary and reserve that expensive resource for the worst problems that

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[46] *Id.* at 1883.
[47] Sabrina Ayers Fisher, *Remote Hearing Etiquette Guide for Counsel and Clients*, OFFICE OF THE PUBLIC ADVOCATE, MARICOPA COUNTY (Arizona) (Apr. 30, 2020), https://superiorcourt.maricopa.gov/media/6787/remote-hearing-etiquette-guide-for-counsel-and-clients.pdf.
[48] *See e.g.*, *Virtual Court Hearings: Practical Tips, Tricks, and Takeaways for Lawyers Everywhere*, HOWARD KENNEDY (U.K. law firm), https://afaa.ngo/resources/News/Virtual%20Court%20Hearings_%20Practical%20tips,%20tricks%20and%20takeaways%20for%20lawyers%20everywhere.pdf;
[49] *Recommendations for New York City Virtual Family Court Proceedings, With Particular Focus on Matters Involving Litigants Who Are Survivors of Abuse*, NEW YORK CITY BAR (Apr. 9, 2021), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/comments-on-virtual-trial-rules-domestic-violence-cases.

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arise. The protocol should direct judges to ensure before a hearing that all parties have reliable internet access and access to devices with the necessary capability to participate in the hearing. Additionally, judges should make sure that all parties have the services they need to fully participate, including language interpreters and adequate support for victims (particularly children and victims of domestic violence).

Judges should also ensure, to the best of their ability, that testifying individuals are in safe locations where they will not be coerced and will be able to speak freely. The courtroom provides this security by the presence of armed guards in a way that is more difficult to re-create online, where the nearby presence of friends, family members, prison guards, or the general public might make it harder for people to testify honestly and completely. This concern about family coercion is particularly acute when witnesses are minor children who might be testifying against family members. The Judiciary should decide what resources it wants or needs to devote to ensure that people have safe places to testify where they will not be coerced.

Particularly relevant here is the inherently coercive nature of testifying from a prison, the psychologically deleterious effects of which are well-documented. Separate guidelines should be issued for prisons, strictly laying out prisoners' need for as much privacy as prison security allow for during their hearings, as well as access to their attorney. Judges should ask parties about all of these factors in advance and ensure that the technology will connect before the hearing, so IT support can be brought in if necessary. In some cases, the likely coercive effects of the environment for a witness or defendant might be so much that the judge should opt to hold the hearing in person. The guidelines the judiciary creates to determine which hearings should be held remotely should address these concerns.

**4. Creating Protocols for Judges' Use During Hearings**

Judges should similarly have a protocol directing them on how to use the technology during the trial. This protocol should include directions about how to maintain order, show documentary evidence (if necessary), and how to ensure attorney-client privilege is guaranteed. It also should include any Rwandan law requirements about when an accused is required to be allowed to be face-to-face with the evidence against them (this is called the right of confrontation in the US and Europe). This protocol should also provide directions to judges on what to do if a participant gets disconnected from the hearing, and what to do if the problem recurs. How long of a break should the proceeding take to allow for reconnection? At what level of technological difficulty should the hearing move to audio-only? When should it simply be rescheduled? The judiciary can impose uniform guidance and pass it along to judges to enact in their virtual courtrooms to ensure a fair approach throughout courtrooms nationwide and a serious attitude throughout proceedings.

**5. Creating Protocols for the Public**

In addition to pre-trial guidance provided to judges, the judiciary should create pre-trial guidance for witnesses and victims, explaining how to use the technology and any secure testimony space, as well as providing them with resources for further support. In Abu Dhabi, the judicial department's website includes hearing instructions, FAQs, and a page guiding the ethics and behaviors of participants in remote hearings that Rwanda could imitate in its public

**KATHERINE VITI**
(540) 931-3946 | 895 Campus Drive #333D, Stanford, CA 94305 | katherineviti@stanford.edu

guidance.[50] This guidance also includes quick access to IT support through Whatsapp and phone. This protocol should include information about witness protection, which is well-established in Rwanda and includes both digital and physical tools for witnesses who are testifying remotely because they fear for their safety.[51]

Optimizing technology can also go beyond protecting the rights and benefits of in person proceedings. An opportunity to increase justice via technology is the ability to publicize hearings. If a hearing will be publicly viewable, either livestreamed or as a recording afterwards, this should be advertised, in conjunction with Rwandan constitutional guarantees of judicial transparency. Access to justice is increased by online hearings because more of the public can see and understand what is going on.

## IV. Conclusion

As Rwanda moves to further implement remote hearings in the criminal context, the Judiciary can set guidelines for judges, prison officials, attorneys, and parties to ensure that due process rights of criminal defendants are respected within the proceedings. Additionally, Rwanda has the potential to expand the technology so as to further the scope at which remote hearings can be conducted. Still, the judiciary should think carefully about in which contexts remote hearings serve the goals of fact-finding and justice, and in what contexts remote hearings make less sense. My comparative review of remote hearing practices in jurisdictions across the world has revealed that most judiciaries are struggling with the same problems in implementation, and that no system has figured out how to best solve many of these problems.

[50] *See* Remote Court Hearings, *supra* note 36. Click on the tabs labelled "Instructions for Attending Hearings", "Ethics of Remote Hearings, and "FAQs", at https://www.adjd.gov.ae/en/Pages/RemoteCourtHearings.aspx. There are also user guides for the two meeting platforms used available at this link.

[51] For information regarding the successes and failures of Rwandan witness protection, particularly in conjunction with cases surrounding the genocide, see Donatien Nikuze, *Witness Protection in Rwandan Judicial System,* 22 INT'L J. ENG'G RSCH AND TECH. 2738 (2013).

## Applicant Details

| | |
|---|---|
| First Name | **Madeleine** |
| Last Name | **Voigt** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **voigtmaddie@gmail.com** |
| Address | **Address**<br>Street<br>**509 N Fremont Ave., Unit 113**<br>City<br>**Tampa**<br>State/Territory<br>**Florida**<br>Zip<br>**33606**<br>Country<br>**United States** |
| Contact Phone Number | **3524671366** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **University of South Florida** |
| Date of BA/BS | **December 2017** |
| JD/LLB From | **Stetson University College of Law**<br>**http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp** |
| Date of JD/LLB | **May 13, 2023** |
| Class Rank | **33%** |
| Law Review/Journal | **Yes** |
| Journal(s) | **Stetson Business Law Review** |
| Moot Court Experience | **No** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **No** |

## Specialized Work Experience

## Recommenders

Hopper, Ryan
hopperr@gtlaw.com
8133185707
Weinstein, David
weinsteind@gtlaw.com
813.318.5701
Weiner, Erica
es0725@gmail.com
917-601-9949

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

Madeleine Voigt
509 N. Fremont Ave.
Unit 113
Tampa, FL 33606

March 25, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am third-year student at Stetson University College of Law and Litigation Paralegal at Greenberg Traurig writing to apply to a clerkship in your chambers for the 2024-25 term.

My resume, writing sample, and law school transcript are enclosed. Letters of recommendation from Erica J. Weiner, Esq. (917.601.9949), Ryan T. Hopper, Esq. (813.318.5707), and David B. Weinstein, Esq. (813.318.5701) will follow. Please let me know if you require additional information. Thank you for your consideration.

Respectfully,

Madeleine Voigt

Madeleine J. Voigt

# MADELEINE J. VOIGT

(352) 467-1366 – mvoigt@law.stetson.edu
Tampa, Florida 33606


## EDUCATION

**STETSON UNIVERSITY COLLEGE OF LAW**, Gulfport, FL
J.D. Candidate, May 2023
Honors: *Stetson Business Law Review*, Notes & Comments Editor
Dean's List, Spring 2021; Honor Roll, Fall 2020
Highest Grade Designation: Ethics & The Practice of Criminal Law
GPA: 3.278
Rank: 85/263 (Top 33%)

**UNIVERSITY OF SOUTH FLORIDA**, Tampa, FL
B.S., Finance, December 2017
GPA: 3.48
Honors: Florida Academic Scholarship Recipient; USF Director's Scholarship Recipient

## EXPERIENCE

**GREENBERG TRAURIG**, Tampa, FL November 2020 – May 2021, April 2022 – Present
*Litigation Paralegal/Law Clerk*
Research and draft memoranda in support of motions regarding substantive and procedural issues, including complex discovery issues. Research expert witness testimony and *Daubert* challenges. Proofread court filings and ensure citations follow *The Bluebook*. Attend strategy calls with expert witnesses.

**ASHLEY FURNITURE INDUSTRIES**, Tampa, FL May 2021 – April 2022
*Trademark & Licensing Paralegal*
Conducted clearance searches in USPTO database (TESS) and common law searches for proposed trademarks. Prepared and filed Trademark applications with the USPTO.

**ALLSTATE**, Tampa, FL September 2018 – November 2020
*Litigation Paralegal*
Prepared responses to requests for production and interviewed clients for interrogatory answers. Requested medical records via subpoena. Scheduled independent medical examinations (IMEs).

**DPW LEGAL**, Wesley Chapel, FL March 2016 – November 2017
*Paralegal/Legal Assistant*
Scheduled hearings, depositions, and mediations. Reviewed citations to record on appeal in draft briefs for accuracy. Prepared Copyright and Trademark applications.

## INTERESTS

Pickleball, investigative journalism, tropical houseplants

(/StudentSelfService/)

Madeleine J Voigt

Student Academic Transcript

# Academic Transcript

**Transcript Level**

Law

**Transcript Type**

Law Sch Transcript w/Rank

**Student Information** | Degrees Awarded | Institution Credit | Transcript Totals | Course(s) in Progress

This is not an official transcript. Courses which are in progress may also be included on this transcript.

## Student Information

**Name**

Madeleine J Voigt

**Curriculum Information**

**Current Program :**

| Program | College | Major and Department |
|---|---|---|
| Juris Doctor | Law School | Law, Department not Declared |

## Degrees Awarded

**Sought**

Juris Doctor

**Major**

Law

## Institution Credit

Term : Fall 2019-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 1181 | Law School-GULFPORT | LW | CONTRACTS | 275 | 4.000 | 11.00 | |
| LAW | 1290 | Law School-GULFPORT/TAMPA | LW | TORTS | 275 | 4.000 | 11.00 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 8.000 | 8.000 | 8.000 | 8.000 | 22.00 | 2.750 |
| **Cumulative** | 8.000 | 8.000 | 8.000 | 8.000 | 22.00 | 2.750 |

Term : Spring 2020-Law

### Term Comments

A global health em
ergency during this
term

required significan
t changes in course
delivery

for most courses. A
ll courses impacted
by the

change in delivery
were graded on a
pass/fail

system.

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 1150 | Law School-GULFPORT/TAMPA | LW | CIVIL PROCEDURE | P | 4.000 | 0.00 | |
| LAW | 1270 | Law School-GULFPORT/TAMPA | LW | RESEARCH AND WRITING I | P | 4.000 | 0.00 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 8.000 | 8.000 | 8.000 | 0.000 | 0.00 | |
| **Cumulative** | 16.000 | 16.000 | 16.000 | 8.000 | 22.00 | 2.750 |

Term : Summer 2020-Law

### Academic Standing

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 1251 | Law School- | LW | REAL | 350 | 4.000 | 14.00 | |

| | | |
|---|---|---|
| | GULFPORT/TAMPA | PROPERTY |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 4.000 | 4.000 | 4.000 | 4.000 | 14.00 | 3.500 |
| **Cumulative** | 20.000 | 20.000 | 20.000 | 12.000 | 36.00 | 3.000 |

Term : Fall 2020-Law

| Academic Standing | Additional Standing |
|---|---|
| Good Standing | Honor Roll |

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 1200 | Law School-GULFPORT | LW | CRIMINAL LAW | 375 | 4.000 | 15.00 | |
| LAW | 1275 | Law School-GULFPORT/TAMPA | LW | RESEARCH AND WRITING II | 275 | 3.000 | 8.25 | |
| LAW | 2350 | Law School-DISTANCE LEARNING | LW | PROFESSIONAL RESPONSIBILITY | 350 | 3.000 | 10.50 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 10.000 | 10.000 | 10.000 | 10.000 | 33.75 | 3.375 |
| **Cumulative** | 30.000 | 30.000 | 30.000 | 22.000 | 69.75 | 3.170 |

Term : Spring 2021-Law

| Academic Standing | Additional Standing |
|---|---|
| Good Standing | Dean's List |

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 1195 | Law School-GULFPORT/TAMPA | LW | CONSTITUTIONAL LAW I | 350 | 4.000 | 14.00 | |
| LAW | 2190 | Law School-GULFPORT | LW | EVIDENCE | 400 | 4.000 | 16.00 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 8.000 | 8.000 | 8.000 | 8.000 | 30.00 | 3.750 |
| **Cumulative** | 38.000 | 38.000 | 38.000 | 30.000 | 99.75 | 3.325 |

Term : Summer 2021-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 3502 | Law School-DISTANCE LEARNING | LW | FLORIDA CRIMINAL PROCEDURE | 325 | 3.000 | 9.75 | |
| LAW | 3592 | Law School-DISTANCE LEARNING | LW | INTERVIEWING AND COUNSELING | 350 | 2.000 | 7.00 | |
| LAW | 3761 | Law School-DISTANCE LEARNING | LW | NEGOTIATION AND MEDIATION | 300 | 2.000 | 6.00 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 7.000 | 7.000 | 7.000 | 7.000 | 22.75 | 3.250 |
| **Cumulative** | 45.000 | 45.000 | 45.000 | 37.000 | 122.50 | 3.310 |

Term : Fall 2021-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 3040 | Law School-GULFPORT | LW | ADMINISTRATIVE LAW | 275 | 3.000 | 8.25 | |
| LAW | 3154 | Law School-GULFPORT | LW | BUSINESS ENTITIES | 350 | 4.000 | 14.00 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| LAW | 3174 | Law School-GULFPORT | LW | BUSINESS LAW REVIEW EDITOR | S+ | 2.000 | 0.00 |
| LAW | 3487 | Law School-DISTANCE LEARNING | LW | FINANCIAL ADVOCACY | S | 1.000 | 0.00 |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 10.000 | 10.000 | 10.000 | 7.000 | 22.25 | 3.178 |
| **Cumulative** | 55.000 | 55.000 | 55.000 | 44.000 | 144.75 | 3.289 |

Term : Spring 2022-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 3090 | Law School-DISTANCE LEARNING | LW | ADVANCED LEGAL RESEARCH | 325 | 2.000 | 6.50 | |
| LAW | 3174 | Law School-GULFPORT | LW | BUSINESS LAW REVIEW EDITOR | S+ | 2.000 | 0.00 | |
| LAW | 3190 | Law School-DISTANCE LEARNING | LW | COMMERCIAL TRANSACTIONS | 325 | 4.000 | 13.00 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 8.000 | 8.000 | 8.000 | 6.000 | 19.50 | 3.250 |
| **Cumulative** | 63.000 | 63.000 | 63.000 | 50.000 | 164.25 | 3.285 |

Term : Summer 2022-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| LAW | 3393 | Law School-DISTANCE LEARNING | LW | ETHICS & THE PRACT OF CRIM LAW | 400 | 3.000 | 12.00 |
| LAW | 3541 | Law School-GULFPORT | LW | INDIVIDUAL RESEARCH PROJECT | I | 1.000 | 0.00 |
| LAW | 3607 | Law School-DISTANCE LEARNING | LW | JUDICIAL PRACTICE | S+ | 2.000 | 0.00 |
| LAW | 3894 | Law School-DISTANCE LEARNING | LW | SURVEY OF FLORIDA LAW | S | 2.000 | 0.00 |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 8.000 | 7.000 | 7.000 | 3.000 | 12.00 | 4.000 |
| **Cumulative** | 71.000 | 70.000 | 70.000 | 53.000 | 176.25 | 3.325 |

Term : Fall 2022-Law

**Academic Standing**

Good Standing

| Subject | Course | Campus | Level | Title | Grade | Credit Hours | Quality Points | R |
|---|---|---|---|---|---|---|---|---|
| LAW | 3140C | Law School-DISTANCE LEARNING | LW | APPELLATE PRAC & ADV: CRIMINAL | 325 | 3.000 | 9.75 | |
| LAW | 3152 | Law School-DISTANCE LEARNING | LW | BANKRUPTCY | 300 | 3.000 | 9.00 | |
| LAW | 3764 | Law School-DISTANCE LEARNING | LW | OVERVIEW OF FLORIDA LAW | 275 | 3.000 | 8.25 | |

| Term Totals | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Current Term** | 9.000 | 9.000 | 9.000 | 9.000 | 27.00 | 3.000 |
| **Cumulative** | 80.000 | 79.000 | 79.000 | 62.000 | 203.25 | 3.278 |

## Transcript Totals

### Level Comments

CLASS RANK FOR
Fall 2022-Law:
85/263

| Transcript Totals - (Law) | Attempt Hours | Passed Hours | Earned Hours | GPA Hours | Quality Points | GPA |
|---|---|---|---|---|---|---|
| **Total Institution** | 80.000 | 79.000 | 79.000 | 62.000 | 203.25 | 3.278 |
| **Total Transfer** | 0.000 | 0.000 | 0.000 | 0.000 | 0.00 | 0.000 |
| **Overall** | 80.000 | 79.000 | 79.000 | 62.00 | 203.25 | 3.278 |

## Course(s) in Progress

Term : Spring 2023-Law

| Subject | Course | Campus | Level | Title | Credit Hours |
|---|---|---|---|---|---|
| LAW | 3685 | Law School-DISTANCE LEARNING | LW | LAW PRACTICE MANAGEMENT | 2.000 |
| LAW | 3696C | Law School-DISTANCE LEARNING | LW | ADV LGL WRT: CONTRACT DRAFTING | 2.000 |
| LAW | 3751 | Law School-DISTANCE LEARNING | LW | MULTISTATE STRATEGIES | 4.000 |

April 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Madeleine “Maddie” Voigt’s application to serve as a law clerk to Your Honor. My name is Ryan Hopper. I am a litigation shareholder at Greenberg Traurig, P.A., and a former law clerk to a U.S. district judge.

Over the past few years and while also attending law school, Maddie has worked as a paralegal in our complex-litigation practice. We predominantly defend sophisticated clients in mass-tort and class actions, and we staff cases leanly to concentrate knowledge and remain nimble. The work is rewarding but demanding.

Maddie has become a core team member and has consistently “punched above her weight” for her age and experience. She routinely helps multiple national-caliber expert witnesses develop opinions on diverse scientific topics—compiling studies and other materials for consideration, participating in working meetings with experts, and serving as a sounding board for anticipated testimony. She contributes to potentially dispositive legal analyses and has helped prepare dozens of Daubert and summary-judgment motions. She supports technical depositions, manages electronic discovery, and otherwise seems to take any laboring oar she can to help represent our clients efficiently and effectively.

I have no doubt that Maddie would prove to be an excellent clerk. Aside from the wealth of practical experience she would bring to the role, Maddie is intellectually curious, hard-working, practical, and self-motivated. And sometimes just as important in close-knit working environments, Maddie has a fantastic attitude. I am confident our colleagues would all agree that Maddie keeps our spirits up when the stakes are high and the nights are long.

Our practice group views clerkships as so valuable that we very rarely hire lawyers directly out of law school. We have not done so in years, much preferring instead to seek young lawyers coming out of federal clerkships. Maddie is an exception, and we are extending her an offer to join us as a lawyer when she graduates and passes the Bar. Even still, we fully support her interest in pursuing a clerkship. My own remains one of the most meaningful periods of my life and career. I hope Maddie can have a similar experience, and I know she would well serve her court and country.

If Your Honor has any questions about Maddie, it would be my pleasure to answer them.

Respectfully,

Ryan Hopper

Shareholder

Greenberg Traurig, P.A.

Tampa, FL 33602

(813) 318-5707

hopperr@gtlaw.com

**Erica J. Weiner**
Telephone: (917)601-9949
Email: EricaJayneWeiner@gmail.com

March 19, 2023

Dear Judge:

I am writing this letter of recommendation in support of Madeleine Voigt for a judicial clerkship with Your Honor upon her upcoming graduation from law school in May 2023.

I first met Madeleine several years ago when she interviewed with me to be a Trademark & Licensing Paralegal on my Intellectual Property and Retail team at Ashley Furniture Industries. At the time, my position was Assistant General Counsel, Global IP & Retail at Ashley Furniture Industries, and I was looking for a candidate who had some fundamental skills, but had a yearning to learn more and really develop in the paralegal role. Madeleine impressed me from the moment we met - - she was bright, motivated and was passionate about learning. She did not appear to be the type of candidate who was just saying these things to get the job, but actually meant them. Happily, this proved to be true, and while working together at Ashley Furniture Industries, Madeleine used her prior knowledge as the building blocks, and continued to learn different areas of the law, from global trademark prosecution, to intellectual property enforcement management and drafting retail store licenses and amendments. She continued to impress me, and even more so as she was a full time law student while working on my team, and handled the balancing of her obligations incredibly well. What impressed me even more was her ability to learn, accept feedback, and incorporate it in her work going forward. She was a great listener and was always trying to think of ways to help.

Based upon my experience with Madeleine, I believe she certainly has the requisite skills to excel in a clerkship, and believe her enthusiasm would only help guarantee success in this role. I hope you will consider her for a clerkship position, and thank you for your consideration.

Best regards,

Erica J. Weiner

IN THE SECOND DISTRICT COURT OF APPEAL OF FLORIDA

| | | |
|---|---|---|
| SALVADOR CARBAJAL GARCIA | ) | |
| | ) | DCA CASE NO. 2D22-1409 |
| Appellant. | ) | L.T. CASE NO. 19-CF-015144 |
| v. | ) | |
| STATE OF FLORIDA | ) | |
| Appellee. | ) | |

An Appeal from the Circuit Court of the Twentieth Judicial Circuit
In and for Lee County

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# APPELLANT'S INITIAL BRIEF

---

Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Cases Page



Constitutions, Statutes, and Rules

## PREFACE

The parties are referred to herein as Mr. Carbajal and the State of Florida (the "State"). The Record on Appeal is cited as (R. *P*) and the trial transcript as (T. *P*) where "*P* " is the page.

## STATEMENT OF THE CASE AND FACTS

### a. The pertinent facts of the alleged offense

On March 4, 2019, Animal Control responded to a complaint about a dog tied to basketball post in a residential driveway. (T. 229, 245). The responding Animal Control officer noticed that the dog, named Walter, had blood on his chest and a rope tied around his neck that was embedded in his skin. (T. 249). Walter emitted a strong, foul odor. (T. 250-51, 284). No one was home while the officer was at the property. (T. 273). The officer removed Walter from the property and took him to Lee County Animal Services for medical treatment. (T. 260). The officer contacted Mr. Carbajal and they met at Lee County Animal Services (T. 263). Mr. Carbajal surrendered Walter. (T. 264-65). It is undisputed that Mr. Carbajal owned Walter. (T. 263-64, 448).

**b. The course of proceedings and the disposition of the matter below**

Salvador Carbajal was charged with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 27).

Less than one month before trial, the State amended the information to charge Salvador Carbajal Garcia with one count of cruelty to animals in violation of Florida Statutes 828.12(2); 777.011. (R. 42).

Mr. Carbajal was tried by jury before the Honorable Bruce Kyle on February 4 and 5, 2020. (R. 47).

Through counsel, Mr. Carbajal filed a motion to suppress evidence obtained as a result of Animal Control and the Lee County Sheriff's Office's entry on his property, arguing that both agencies lacked the exigency required to enter his property without a warrant. (R. 50). The motion was heard before trial began and was denied. (T. 3, 67).

At trial, the State moved to limit proffered witness testimony from Mr. Carbajal's neighbors, Mr. and Ms. Gamble. (T. 459). The court granted this motion in part, excluding testimony about their interaction with law enforcement. (T. 474).

Counsel for Mr. Carbajal moved for judgment of acquittal after the State rested, arguing that the State charged a different individual, Salvador Garcia, pursuant to the amended information. (T. 444, 523). The motion was denied. (T. 449). Mr. Carbajal renewed his motion at the close of all evidence. The motion was again denied. (T. 523). After the defense rested, counsel for Mr. Carbajal requested an additional jury instruction of the standard cruelty to animals instruction. (T. 529). The request was denied. (T. 535).

The jury found Mr. Carbajal guilty as charged. (R. 74). Mr. Carbajal moved for a new trial, arguing that the trial court committed prejudicial error when it excluded Mr. and Ms. Gamble's testimony and denied Mr. Carbajal's motion to suppress and motion for judgment of acquittal. (R. 98). The court did not rule on the motion and Mr. Carbajal was sentenced to 364 days in jail as a condition to five years of probation. (R. 106, 113-14).

**c. The pertinent facts of the trial**

Before opening arguments, the court heard Mr. Carbajal's motion to suppress. (T. 11-68). The state proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered

testimony did not show the exigent circumstances required to enter his property without a warrant. The court denied the motion, finding that Officer Ortiz's observations warranted Walter's immediate removal. (T. 67-68).

Animal Control Officer Zemper Ortiz testified that she received the complaint about Walter on the morning of March 3, 2019 and arrived at Mr. Carbajal's home to investigate the complaint the next day. (T. 247). Officer Ortiz approached Walter and noticed the embedded rope and wound on Walter's neck. (T. 250). She testified that she was approximately two feet away from Walter when she noticed a rotting smell. (T. 250). Walter was friendly and wanted Officer Ortiz to pet him. (T. 37). Walter was not whimpering or barking. (T. 37). Officer Ortiz noticed a pink bucket near Walter that contained water. (T. 23-24). She testified that she knocked on the door of the house and realized no one was home. (T. 251). She then returned to Walter and called dispatch for Lee County Sheriff's Office to respond. (T. 251). While waiting for the deputy to arrive, Officer Ortiz did not try to remove the rope from Walter's neck. (T. 253). She testified that Walter was unable to take shelter underneath Mr. Carbajal's vehicle parked in the driveway. (T. 255-56).

Lee County Sheriff's Deputy Joseph Roedding responded to Officer Ortiz's call for assistance. (T. 283-84). Deputy Roedding testified that when he arrived on scene, Officer Ortiz requested he generate a case number so she could put a notification on Mr. Carbajal's door that Animal Control was at the property. (T. 284). Deputy Roedding testified this was the only reason he was called to the property. (T. 284). When he approached the driveway, he noticed Walter come out from under Mr. Carbajal's parked vehicle. (T. 290). He testified that he noticed an odor, possibly feces, when he approached Walter. (T. 285-86). He did not notice Walter's injury at first. (T. 289). Officer Ortiz asked Deputy Roedding to help cut the rope tying Walter to the basketball hoop. (T. 288). He cut the rope and then helped Officer Ortiz take Walter to her Animal Control bus. (T. 289). When Deputy Roedding asked Officer Ortiz why Walter was being removed from the property, Officer Ortiz lifted Walter's jaw, and Deputy Roedding noticed "swelling to the neck and a little red mark" where the rope was attached to Walter. (T. 289). This is the first time Deputy Roedding noticed that Walter was injured. (T. 289).

During proffered direct examination, Mr. Gamble testified that on the morning of Mr. Carbajal's arrest, five Lee County Sheriff's

officers came to his garage door. (T. 454). Mr. Gamble testified that the officers "kept trying to tell us that we needed to say something bad about Mr. Carbajal." (T. 455). He further testified that the officers talked to him about the media. (T. 455). More specifically, he quoted the officer telling him that he needed to say something bad about Mr. Carbajal for the media. (T. 456).

Ms. Gamble testified during proffered direct examination that the officers wanted her to say there was a smell (coming from Walter) and informed her that the media will be at her door after Mr. Carbajal's arrest. (T. 467).

The jury received the following standard instructions: Introduction to Final Instructions, Statement of the Charge, Count I Aggravated Animal Cruelty, Principals, Plea of Not Guilty, Reasonable Doubt and Burden of Proof, Defendant's Statements, Rules for Deliberation, Cautionary Instruction, Verdict, and Submitting Case to the Jury. (R. 59-71). Counsel stipulated to the removal of numbers nine and ten from the standard instructions for Weighing the Evidence. (T. 526). Mr. Carbajal requested an instruction of the standard animal cruelty instruction based on F.S. 828.12(1). (T. 530). The request was denied. (T. 535).

The verdict form was general: "the defendant is guilty of Aggravated Animal Cruelty." (R. 74).

## SUMMARY OF THE ARGUMENT

Mr. Carbajal's motion to suppress evidence obtained from the warrantless search of his property was denied in error because the State failed to show exigent circumstances. *Brinkley v. County of Flagler*, 769 So. 2d 468 (Fla. 5th DCA 2000); *Davis v. State*, 834 So. 2d 322 (Fla. 5th DCA 2003). Walter was not subject to seizure under the plain view doctrine. *Pagan v. State*, 830 So. 2d 792, 808 (Fla. 2002). Thus, Mr. Carbajal's judgment and sentence should be vacated.

The trial court erred when it denied Mr. Carbajal's request for an additional jury instruction of the standard animal cruelty instructions, because the instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v State*, 787 So. 2d 747, 756 (Fla. 2001). Accordingly, at the least, Mr. Carbajal's judgment and sentence should be reversed and remanded for new trial.

## ARGUMENT

### I. MR. CARBAJAL'S MOTION TO SUPPRESS WAS DENIED IN ERROR BECAUSE THE STATE FAILED TO SHOW THE EXIGENT CIRCUMSTANCES REQUIRED FOR A WARRANTLESS SEARCH AND SEIZURE

This Court reviews the denial of a motion to suppress using a mixed standard: the trial court's application of the law is reviewed *de novo*, but this Court defers to the trial court's factual findings if they are supported by competent, substantial evidence. *Duke v. State*, 82 So. 3d 1155, 1157-58 (Fla. 2d DCA 2012).

Law enforcement may enter private property without an arrest or search warrant to: preserve life or property, render first aid and assistance, or conduct a general inquiry into an unresolved crime. *Brinkley*, 769 So. 2d at 471.

However, they must not enter with an accompanying intent to arrest or search, and, importantly, they must have reasonable grounds to believe there is a substantial threat of imminent danger to life, health, or property. *See id.*

Moreover, under the plain view doctrine, law enforcement can only seize an object without a warrant if the object's incriminating character is "immediately apparent" and the officers have a lawful

right of access to the object. *Jones v. State*, 648 So. 2d 669 (Fla. 1994) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993)).

Here, the court heard proffered testimony from Animal Control Officer Zemper Ortiz and Lee County Sheriff's deputy Joshua Roedding. (T. 12, 44). Mr. Carbajal argued that the proffered testimony did not show the exigent circumstances required to enter his property without a warrant. (T. 66-67). However, the court found that Officer Ortiz's observations warranted immediate action. (T. 66-67).

The record does not demonstrate that Animal Control and the Lee County Sheriff's Office's had the exigency required to search Mr. Carbajal's property without a warrant. The investigating Animal Control officer arrived at Mr. Carbajal's home to investigate the complaint, that Walter was tied to a basketball post in a driveway, a day after it was received. (T. 247). It wasn't until the officer approached Walter that she noticed blood on Walter's chest (T. 250). She noticed that Walter smelled once she was within two feet of him. (T. 250). Walter was friendly and not showing any obvious signs of distress, like whimpering or barking. (T. 37). Walter had water available to him. (T. 23-24). Notably, once the officer noticed the rope

embedded in Walter's neck, the officer never tried to remove it. (T. 253).

When the Lee County Sheriff's deputy arrived at Mr. Carbajal's property to complete paperwork, the deputy did not notice Walter's injury until he helped place Walter into the animal control officer's vehicle. (289). He did not notice Walter's injury while cutting the rope. (289). The deputy also noticed an odor, which he thought may have been feces. (T. 285-86). Once Walter was in the animal control officer's vehicle, the deputy noticed "swelling to the neck and a little red mark" after the animal control officer lifted Walter's chin to expose his neck (289). This was the first time the deputy noticed that Walter was injured. (289).

The facts in *Brinkley* are in stark contrast. In *Brinkley*, an animal control officer and sheriff's deputy responded to a complaint about many animals being kept in unhealthy conditions on a farm. *Brinkley*, 769 So. 2d at 469. Upon arriving at the gate of the property, both officers were "immediately struck by the undeniable reality of the horrid existence of inhumanity." *Id* at 471. Just by standing at the gate, both officers were overwhelmed by the nauseating smell of animal waste and could see piles upon piles of trash and feces on the

property. Dogs were running freely around the property and barking so loud that the officers had to shout to speak to one another. When approaching the farmhouse, the officers noticed a decaying dog carcass on top of a stack of small pet carriers on the porch. There was a living dog in one of the small carriers and fluid from the decaying carcass was dripping onto the living dog. The insides of the animal carriers were lined with approximately three inches of feces and there were many water bowls containing black, foul-smelling water or no water at all. Further inspection of the property revealed a second dead dog, partial dog remains, and a roach infestation so severe that roaches were eating a puppy's flesh.

Given the obvious distress of the animals and abhorrent conditions of the property, any reasonable person would have concluded that the immediate need for protective action was warranted. *Id* at 472. The animals on the property were seized. *Id*.

The facts in Mr. Carbajal's case simply do not demonstrate the exigency required for a warrantless search and seizure. Walter was in good spirits and not showing any obvious signs of distress. Walter's wound was not immediately apparent. The deputy did not even notice the wound until after he helped load Walter into the

animal control vehicle. At that point, the deputy asked why Walter was being removed and the animal control officer lifted Walter's chin to show the deputy the wound.

Moreover, besides the smell with a conflicting source, the record does not show Mr. Carbajal's property and Walter's area to be in a horrid, inhumane condition. Thus, any reasonable person who arrived at Mr. Carbajal's property the day it was investigated would not have concluded that an urgent and immediate need for protective action was warranted. Accordingly, Mr. Carbajal's motion to suppress was denied in error and his judgment and sentence should be vacated.

## II. DENIAL OF MR. CARBAJAL'S REQUEST FOR THE STANDARD ANIMAL CRUELTY INSTRUCTION DEPRIVED MR. CARBAJAL OF AN ADEQUATE THEORY OF DEFENSE

This Court reviews a trial court's decision on the giving or withholding of a proposed jury instruction is under the abuse of discretion standard, and a defendant is entitled to have the jury instructed on the rules of law applicable to his theory of defense if there is any evidence to support such instructions. *Aumuller v. State*, 944 So. 2d 1137, 1142 (Fla. 2d DCA 2006).

The trial court erred when it denied Mr. Carbajal's request for the misdemeanor animal cruelty instruction, because the felony instruction given did not adequately cover his theory of defense. *See Parker v. State*, 641 So. 2d 369, 376 (Fla. 1994); *see also Stephens v. State*, 787 So. 2d 747, 756 (Fla. 2001).

To receive an additional instruction, the requested instruction must be supported by the evidence, be a correct statement of the law that is not misleading or confusing, and ensure that the defendant's theory of defense is adequately covered. *See Stephens*, 787 So. 2d at 756. Whether the animal cruelty amounts to a misdemeanor under F.S. 828.12(1) or a felony under F.S. 828.12(2) is a question for the jury. *See State v. Morival*, 75 So. 3d 810 (Fla. 2d DCA 2011) (citing *Hynes v. State*, 1 So. 3d 328 (Fla. 5th DCA 2009)).

Here, it is undisputed that Mr. Carbajal's requested standard instruction is a correct statement of law that is not misleading or confusing. In addition, the requested instruction clearly encompasses Mr. Carbajal's alleged conduct of animal cruelty (T. 530-531). Lastly, the requested instruction was required to ensure that Mr. Carbajal's theory of defense was adequately covered pursuant to *Stephens* and *Morival*.

Mr. Carbajal requested jury instruction 29.13(a), which is the standard instruction for cruelty to animals under F.S. 828.12(1). (T. 530). The trial court denied Mr. Carbajal's request solely because cruelty to animals is not listed as a category two lesser included offense on the standard instructions for animal cruelty. (T. 535).

However, the crux of Mr. Carbajal's defense was that he did not intentionally harm Walter. (T. 235-36). Mr. Carbajal offered witness testimony from neighbors that interacted with and observed Walter on a regular basis (T. 481-83, 488-92). Mr. Carbajal testified that he did not notice anything wrong with Walter and Walter was not in distress (T. 503-505).

It was possible for the jury to find that Mr. Carbajal committed a misdemeanor under F.S. 828.12(1) because there is evidence to support that he did not intentionally harm Walter. Thus, the jury should have received the standard instruction for cruelty to animals under F.S. 828.12(1). Without it, Mr. Carbajal was deprived of his theory of defense that he did not intentionally harm Walter. Accordingly, judgment and sentence should be reversed and remanded for new trial.

## CONCLUSION

For the reasons contained herein, this Court must vacate Mr. Carbajal's judgment and sentence, and remand for new trial.

Respectfully submitted,

Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu

Counsel for Appellant Carbajal

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via email to Pamela Jo Bondi, Office of the Attorney General, CrimappTPA@myfloridalegal.com, Concourse Center #4, 3507 E. Frontage Rd. – Suite 200, Tampa, FL 33607, (813) 287-7900, on this 21st day of November, 2022.

S/ Madeleine Voigt
Madeleine Voigt, Esq.
Florida Bar No. 000000
1 Main Street
Tampa, FL 36000
813-555-5555
mvoigt@law.stetson.edu
Counsel for Appellant Carbajal

## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font size used in this Brief is Bookman Old Style 14 point and Courier New 12 point in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

S/ Madeleine Voigt

## Applicant Details

| | |
|---|---|
| First Name | **Wesley** |
| Last Name | **Ward** |
| Citizenship Status | **U. S. Citizen** |
| Email Address | **wesleybward@gmail.com** |
| Address | **Address**<br>Street<br>**308 Packard St. Apt. 6**<br>City<br>**Ann Arbor**<br>State/Territory<br>**Michigan**<br>Zip<br>**48104**<br>Country<br>**United States** |
| Contact Phone Number | **3098303879** |

## Applicant Education

| | |
|---|---|
| BA/BS From | **Illinois State University** |
| Date of BA/BS | **May 2017** |
| JD/LLB From | **The University of Michigan Law School**<br>**http://www.law.umich.edu/currentstudents/careerservices** |
| Date of JD/LLB | **May 6, 2023** |
| Class Rank | **School does not rank** |
| Law Review/Journal | **Yes** |
| Journal(s) | **University of Michigan Journal of Law Reform** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Global Antirutst Institute Moot Court**<br>**Campbell Moot Court** |

## Bar Admission

## Prior Judicial Experience

| | |
|---|---|
| Judicial Internships/ Externships | **No** |
| Post-graduate Judicial Law Clerk | **Yes** |

## Specialized Work Experience

| | |
|---|---|
| Specialized Work Experience | **Bankruptcy** |

## Recommenders

Mortenson, Julian
jdmorten@umich.edu
734-763-5695

Pottow, John
pottow@umich.edu
734-647-3736

Salim, Oday
osalim@umich.edu
7347637087

**This applicant has certified that all data entered in this profile and any application documents are true and correct.**

April 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510â€‘1915

Dear Judge Walker:
I am a third-year law student at the University of Michigan, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

I am a competitive distance runner and a Type 1 diabetic. Balancing the rigors of law school with training and managing a chronic illness has taught me to be highly organized, diligent, and resourceful. These traits allowed me to succeed in my jobs before law school, where working as a legislative assistant and in political advertising, I utilized my ability to adjust to sudden changes and take ownership of large projects.

My internships with the Consumer Protection Bureau of the New York Attorney General's Office and the National Consumer Law Center have strengthened my desire to be a public interest litigator. After law school, I will clerk in the U.S. Bankruptcy Court for the District of Delaware for Judge Craig T. Goldblatt. There, I hope to improve my legal research skills, engage with cutting-edge corporate bankruptcies, and gain experience with complicated commercial litigation that affects consumers. A further clerkship in your chambers will allow me to further refine my writing skills and immerse myself in a wider range of legal issues.

I have attached my résumé, transcripts, writing sample, and letters of recommendation from the following professors:

- Professor Julian Mortenson: jdmorten@umich.edu, (734) 763-5695;
- Professor John A.E. Pottow: pottow@umich.edu, (734) 647-3736; and
- Clinincal Professor Oday Salim: osalim@umich.edu, (586) 255-857.

Thank you for your time and consideration.

Sincerely,

Wesley B. Ward

# Wesley B. Ward

308 Packard Street, Apartment 6, Ann Arbor, Michigan 48104
(309) 830-3879 • wbward@umich.edu

## EDUCATION

**UNIVERSITY OF MICHIGAN LAW SCHOOL** — Ann Arbor, Michigan
*Juris Doctor* — Expected May 2023
Journal: Michigan Journal of Law Reform, *Executive Editor*, Vol. 56
Activities: Research Assistant to Professor John A.E. Pottow; Global Antitrust Institute Moot Court Competition, *Quarterfinalist* (2023); Henry M. Campbell Moot Court Competition, *Participant* (2022), *Marshal* (2020-21); Environmental Law and Sustainability Clinic at Michigan Law (2022)

**ILLINOIS STATE UNIVERSITY** — Normal, Illinois
*Bachelor of Science* in Finance, *summa cum laude* and *Bachelor of Arts* in Political Science, *summa cum laude* — December 2017
Honors: Student Laureate of The Lincoln Academy of Illinois (2017) (one student honored from each Illinois university)
Robert G. Bone Scholarship (2017) (top academic honor at Illinois State)
Activities: Division I Cross-Country/Track & Field; Department of History Research Assistant

## EXPERIENCE

**U.S. BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE** — Wilmington, Delaware
*Incoming Law Clerk for the Honorable Craig T. Goldblatt* — September 2023 – September 2024

**OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA** — Washington, D.C.
*Pro Bono Research Lead* — November 2022 – Current

- Directed a team of four Michigan Law students in researching and writing a substantive memo for the Office of Consumer Protection and coordinated our progress with supervisors in the District of Columbia and California.

**NATIONAL CONSUMER LAW CENTER** — Boston, Massachusetts
*Summer Intern* — May 2022 – August 2022

- Wrote articles addressing emerging legal theories to tackle problems faced by Fair Debt Collection Practices Act plaintiffs in gaining access to federal courts.
- Analyzed over 1,200 complaints from the Consumer Financial Protection Bureau's database regarding consumers' difficulties with rental debt collectors, culminating in drafting a 20-page white paper for NCLC.

**OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL** — New York, New York
*Summer Intern, Consumer Frauds and Protection Bureau* — June 2021 – July 2021

- Researched complex legal issues and drafted memoranda in preparation for litigation against small business loan providers and automobile loan providers engaged in illegal conduct.
- Analyzed and summarized materials provided by whistleblowers in an investigation of a for-profit college, and drafted document requests sent to the target of that investigation.

**STATE OF ILLINOIS** — Springfield, Illinois
*Legislative Assistant to State Senator Ram Villivalam* — November 2019 – August 2020

- Coordinated Senator Villivalam's capitol activities including filing legislation and meetings with stakeholders.
- Educated constituents on the latest local, state, and federal agency programs to help working people and small businesses during the pandemic-related economic downturn.

**THREE POINT MEDIA** — Chicago, Illinois
*Production Assistant* — May 2018 – December 2018

- Produced television advertisements for political campaigns with budgets from $100 thousand to over $25 million, including high-profile congressional, and gubernatorial campaigns in a high-pressure environment.

## ADDITIONAL

**Interests**: Competitive marathon running and Type 1 Diabetes advocacy.
**Volunteer**: United Community Housing Coalition (2020-21), ALS Association (2019), The Immigration Project (2017).

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Ward,Wesley Barnes
**Student#:** 44896496

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2020** | | | **(August 31, 2020 To December 14, 2020)** | | | | | |
| LAW | 510 | 002 | Civil Procedure | Nicholas Bagley | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 520 | 004 | Contracts | Nicolas Cornell | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 530 | 001 | Criminal Law | David Moran | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 593 | 008 | Legal Practice Skills I | Nancy Vettorello | 2.00 | | 2.00 | S |
| LAW | 598 | 008 | Legal Pract:Writing & Analysis | Nancy Vettorello | 1.00 | | 1.00 | S |
| **Term Total** | | | | **GPA: 3.300** | **15.00** | **12.00** | **15.00** | |
| **Cumulative Total** | | | | **GPA: 3.300** | | **12.00** | **15.00** | |
| **Winter 2021** | | | **(January 19, 2021 To May 06, 2021)** | | | | | |
| LAW | 540 | 001 | Introduction to Constitutional Law | Julian Davis Mortenson | 4.00 | 4.00 | 4.00 | A- |
| LAW | 569 | 001 | Legislation and Regulation | Daniel Deacon | 4.00 | 4.00 | 4.00 | A- |
| LAW | 580 | 001 | Torts | Roseanna Sommers | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 594 | 008 | Legal Practice Skills II | Nancy Vettorello | 2.00 | | 2.00 | S |
| **Term Total** | | | | **GPA: 3.566** | **14.00** | **12.00** | **14.00** | |
| **Cumulative Total** | | | | **GPA: 3.433** | | **24.00** | **29.00** | |

Continued next page >

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Ward,Wesley Barnes
**Student#:** 44896496

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2021** | **(August 30, 2021 To December 17, 2021)** | | | | | | | |
| LAW | 637 | 001 | Bankruptcy | John Pottow | 4.00 | 4.00 | 4.00 | A- |
| LAW | 675 | 001 | Federal Antitrust | Daniel Crane | 3.00 | 3.00 | 3.00 | A |
| LAW | 741 | 004 | Interdisc Prob Solv<br>Identity Theft: Causes and Countermeasures | Barbara Mcquade<br>Bridgette Carr<br>Florian Schaub | 3.00 | 3.00 | 3.00 | A |
| LAW | 768 | 001 | 21st C. Infrastr/Lawyer's Role | Andrew Doctoroff | 2.00 | 2.00 | 2.00 | A |
| LAW | 885 | 001 | Mini-Seminar<br>American Ecological Writings | Nicolas Cornell | 1.00 | | 1.00 | S |
| LAW | 900 | 133 | Research | Barbara Mcquade | 2.00 | 2.00 | 2.00 | A |
| **Term Total** | | | | **GPA: 3.914** | **15.00** | **14.00** | **15.00** | |
| **Cumulative Total** | | | | **GPA: 3.610** | | **38.00** | **44.00** | |
| **Winter 2022** | **(January 12, 2022 To May 05, 2022)** | | | | | | | |
| LAW | 716 | 001 | Complex Litigation | Maureen Carroll | 4.00 | 4.00 | 4.00 | A |
| LAW | 803 | 001 | Advocacy for Underdogs | Andrew Buchsbaum | 2.00 | 2.00 | 2.00 | A |
| LAW | 930 | 001 | Envt'l Law & Sustain Clinic | Oday Salim | 4.00 | 4.00 | 4.00 | A- |
| LAW | 931 | 001 | Envt'l Law & Sustain Clnc Sem | Oday Salim | 3.00 | 3.00 | 3.00 | A- |
| **Term Total** | | | | **GPA: 3.838** | **13.00** | **13.00** | **13.00** | |
| **Cumulative Total** | | | | **GPA: 3.668** | | **51.00** | **57.00** | |

Continued next page >

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# The University of Michigan Law School

## Cumulative Grade Report and Academic Record

**Name:** Ward,Wesley Barnes
**Student#:** 44896496

University Registrar

| Subject | Course Number | Section Number | Course Title | Instructor | Load Hours | Graded Hours | Credit Towards Program | Grade |
|---|---|---|---|---|---|---|---|---|
| **Fall 2022** | **(August 29, 2022 To December 16, 2022)** | | | | | | | |
| LAW | 483 | 001 | Judicial Clerkships | Kerry Kornblatt | 2.00 | 2.00 | 2.00 | A- |
| LAW | 669 | 001 | Evidence | Richard Friedman | 4.00 | 4.00 | 4.00 | A |
| LAW | 677 | 001 | Federal Courts | Leah Litman | 4.00 | 4.00 | 4.00 | B+ |
| LAW | 867 | 001 | Antitrust and Democracy | Daniel Crane | 2.00 | 2.00 | 2.00 | A- |
| LAW | 885 | 008 | Mini-Seminar Lawyering in Washington, DC | Chris Walker | 1.00 | | 1.00 | S |
| **Term Total** | | | | **GPA: 3.666** | **13.00** | **12.00** | **13.00** | |
| **Cumulative Total** | | | | **GPA: 3.668** | | **63.00** | **70.00** | |
| **Winter 2023** | **(January 11, 2023 To May 04, 2023)** | | | | | | | |
| LAW | 643 | 001 | Crim Procedure: Bail to Post Conviction Review | Barbara Mcquade | 3.00 | 3.00 | 3.00 | A |
| LAW | 730 | 001 | Appellate Advoc:Skills & Pract | Evan Caminker | 4.00 | 4.00 | 4.00 | A |
| LAW | 797 | 001 | Model Rules and Beyond | Bob Hirshon | 3.00 | 3.00 | 3.00 | A |
| LAW | 815 | 001 | Public Law Workshop | Julian Davis Mortenson<br>Chris Walker | 2.00 | 2.00 | 2.00 | A |
| LAW | 854 | 001 | Anti-corruption Law & Practice | Chavi Nana | 2.00 | 2.00 | 2.00 | A |
| LAW | 886 | 008 | Mini-Seminar II Lawyering in Washington, DC | Chris Walker | 0.00 | | 0.00 | S |
| LAW | 900 | 220 | Research | John Pottow | 1.00 | 1.00 | 1.00 | A+ |
| **Term Total** | | | | **GPA: 4.020** | **15.00** | **15.00** | **15.00** | |
| **Cumulative Total** | | | | **GPA: 3.735** | | **78.00** | **85.00** | |

End of Transcript
Total Number of Pages 3

This transcript is printed on special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required.

A BLACK AND WHITE TRANSCRIPT IS NOT AN ORIGINAL

# University of Michigan Law School Grading System

## Honor Points or Definitions

| Through Winter Term 1993 | | Beginning Summer Term 1993 | |
|---|---|---|---|
| A+ | 4.5 | A+ | 4.3 |
| A | 4.0 | A | 4.0 |
| B+ | 3.5 | A- | 3.7 |
| B | 3.0 | B+ | 3.3 |
| C+ | 2.5 | B | 3.0 |
| C | 2.0 | B- | 2.7 |
| D+ | 1.5 | C+ | 2.3 |
| D | 1.0 | C | 2.0 |
| E | 0 | C- | 1.7 |
| | | D+ | 1.3 |
| | | D | 1.0 |
| | | E | 0 |

**Other Grades:**

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

## Third Party Recipients

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MICHIGAN LAW
UNIVERSITY OF MICHIGAN
701 South State Street
Ann Arbor, MI 48109-3091

JULIAN DAVIS MORTENSON
James G. Phillipp Professor of Law

April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write with an enthusiastic recommendation of my student Wes Ward for a clerkship in your chambers. Wes is an incisive thinker, an earnest believer in public service, and a thoughtful and other-oriented human being. He'd be a terrific addition to your clerkship class both for the substance of his work and for his team play in chambers.

I first got to know Wes as a student in my first-year constitutional law class in the winter semester of 2021. Even in the somewhat odd hybrid circumstances of the class, Wes stood out from early on in the semester, in part because of his sheer command of the material on cold call, and in part because he attended every office hours bursting with questions for me—and enthusiasm for his classmates' perspective. He's the kind of person who is so intrinsically interested in the ideas being engaged with that the sheer intellectual generosity of his curiosity and enthusiasm is infectious. I came to think of him as part of the "glue" that would hold office hours conversations together, always finding a way to stitch together something Person A said with something Person B had said earlier. He had a way of doing this that was both useful and also made the conversation—all of which was taking place over Zoom, at least for office hours—feel more integrated and less like a series of one-off Q&A interventions

Wes did a terrific job on the exam, turning in a thorough, careful, insightful and creative set of responses to the essay questions —written with a clear and incisive style that made it easy to follow his analysis of even the most complicated questions. I was struck in particular by his discussion of a fact pattern involving Covid-related restrictions and requirements for a state bar exam; I had intended the question principally to test equal protection concepts, but in addition to thoroughly airing those issues, Wes went on to identify a very interesting set of Dormant Commerce Clause issues that I hadn't anticipated coming out of anyone's responses. It was a really impressive job.

Wes has come to law school with a strong sense of public service mission—the sort of earnest and realistic commitment to dedicating his career to helping others that is especially inspiring to encounter as a teacher. He worked before law school at a legal non-profit for low-income migrants, and has devoted much of his law school time—in the classroom, in extra-curriculars, and in the summers—to exploring a wide range of government and public interest career possibilities. He remains open to many public service possibilities, but it seems to me that the question of consumer protection occupies a place particularly close to his heart. In part this is because of his work experience at places like the New York Consumer Fraud and Protection Bureau, but more fundamentally I think it is connected to his own sense for the vulnerability of families facing hard questions about difficult situations. His father was diagnosed with ALS several years ago, and the process of trying to find treatments for what is an all-but-hopeless diagnosis opened Wes's eyes to the ways that consumer protection implicates some of the most vulnerable social relationships that exist. I really look forward to seeing where these interests take Wes over the course of his career, and I am confident that we can expect great contributions from him for decades to come.

I hope it's clear that I hold Wes in high regard, both personally and academically. Please don't hesitate to let me know if I can answer any questions or otherwise help you assess his candidacy in any way.

Best regards,

Julian Davis Mortenson
James G. Phillipp Professor of Law
Michigan Law School

Julian Mortenson - jdmorten@umich.edu - 734-763-5695

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John A. E. Pottow
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April 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is a pleasure to recommend Wesley Ward for a judicial clerkship. Wesley was in my bankruptcy class this past year at Michigan Law and he distinguished himself both in class and on the examination (blindly-graded). He demonstrated not just a sharp mind but a voracious interest in the policy, especially behind the consumer bankruptcy system. He clearly has strong passions for consumer protection and financial regulation. I did not know of his prior experience in public service, but learning of it after the fact confirms the positive impressions I developed during my class.

But rather than his law school successes, what I'd like to comment on briefly regards his non-law school "personal story," which may not come through from review of his transcript. As a young man, Wes had to confront the devastating news of his father's ALS diagnosis. He moved across country from Illinois to North Carolina to help care for his father. He did so until his own care was not enough and his father for his final days had to go into a professional setting. Losing his parent after having uprooted a fledgling career did not phase Wes, as he applied to law school during all this and came to Michigan. He just did the right thing and carried on.

After an understandably shaky start—and let me be clear, I just mean B+/average start, not bad—Wes started to find himself when he got to choose courses of his own; you can see on even a cursory review of his transcript the inexorable upward march of his grades. Now, if you want someone who was editor-in-chief of the law review, Wes will not be your guy. He's smart and did well in my class, but he was not legendary. But if you want someone who not only mastered a complex statutory code but also went beyond it to interrogate its deep structure (or lack thereof) for richer understanding and analysis, then he could be a great fit.

He's a humble, modest, and caring young man. It's impossible to imagine him not fitting in well in any chambers. I recommend him unhesitatingly.

If I can be of any further questions in this matter, please reach out at your convenience.

Very truly yours,

John A. E. Pottow

April 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

For the clerkship position, I highly recommend Wes Ward to you. Wes's analytic skills, writing abilities, and research persistence would greatly benefit your chambers.

Wes was a student in my Environmental Law & Sustainability Clinic. The Clinic provides students the opportunity to manage real cases for real clients. In the context of practicing energy, environmental, and conservation law, we focus on the following skills: writing for diverse audiences; research efficiency; representing organizational clients; and negotiation. In Winter 2022, he was enrolled in the clinic, which consists of a seminar class and case work.

Under my supervision, Wes represented two nonprofit organizations for whom he developed a litigation plan to address a facility that was polluting Lake Superior. Wes had to research a myriad of topics, including the public trust doctrine and water quality permitting. His research was meticulous and persistent. For his common law research, he efficiently found the most helpful and harmful case law. For his regulatory research, he thoroughly explored a dense complicated administrative scheme. When he hit a roadblock, he did not give up – he came to me with questions, returned to the research, and did not give up until he found what he needed.

Wes was a very good writer and analyst. He was thoughtful about core writing mechanics like organization, topic sentences, and matching his propositions with sufficient supporting evidence. He edited his memos effectively based on his own assessment and supervisor review. He always worked to see the legal forest from the trees of cases, statutes, and regulations.

Aside from being a good researcher, writer, and analyst, Wes had exemplary work ethic and a professional demeanor. He was punctual, communicated regularly, and was always prepared for meetings. He worked very well with his teammate. Perhaps most importantly, his clients were incredibly pleased with his work.

Wes's ability to engage in high level objective analysis and writing, combined with his work ethic and personality, make it easy for me to recommend him without reservation. If you wish to further discuss, please contact me anytime at osalim@umich.edu or 586-255-8857.

Sincerely yours,

Oday Salim
Director, Environmental Law & Sustainability Clinic

# Wesley B. Ward

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**WRITING SAMPLE**

I prepared this appellate opinion during the fall semester of 2022 for a Judicial Clerkships practice simulation. The case involved a fictitious high-school student who sought to place advertisements on Cleveland's public transit vehicles. Her application was rejected, then she filed suit on First Amendment grounds. Professor Kerry Kornblatt provided editorial suggestions, but this writing sample reflects my own work.

**UNITED STATES COURT OF APPEALS**
FOR THE SIXTH CIRCUIT

_____

GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY (RTA) and JOSEPH CALABRESE, individually in his official capacity as General Manager and Chief Executive Officer of the RTA

*Defendants-Appellants*,

No. 22-16123

*v.*

KATHERINE FISHER, through her parent and guardian NOAH FISHER

*Plaintiff-Appellee*.

Appeal from the United States District Court for the Northern District of Ohio at Cleveland.
No. 22-cv-16123—Diane L. Clayton, District Judge.

Defendants Greater Cleveland Regional Transit Authority (RTA) and Joseph Calabrese appeal the district court's order granting a motion for preliminary injunction. Plaintiff-Appellee Katherine Fisher proposed an advertisement to appear on Defendant's vehicles, which RTA rejected for violating two of its policies. Ms. Fisher and her father sought a preliminary injunction relief requiring Defendant to display the advertisement, which the district court granted. We REVERSE the district court's order and REMAND with instructions that the Plaintiff's complaint be dismissed.

## I. Background

### A. Defendant-Appellant's Advertising Program

Defendant-Appellant Greater Regional Transit Authority (RTA) allows advertisements to appear on its vehicles, given the advertisements comply with certain policies. Defendant-Appellant Joseph Calabrese is the CEO and general manager of RTA and has overseen RTA's advertising program since its inception. R. 030. Proposed advertisements are submitted to a contractor who performs preliminary tasks, like providing the customer with a price estimate. Id. Each month, the contractor sends the proposed advertisements to Calabrese for review, who makes the final determination about whether the advertisements comply with RTA policy. Id.

RTA's advertising program seeks to "provide revenue for RTA while at the same time maintaining RTA ridership and assuring riders will be afforded a safe and pleasant environment." R. 042. Maintaining and increasing ridership sustains the financial health of the transit system, Mr. Calabrese argued, and that depends on riders having pleasant experiences. R. 037. RTA reserved the right to approve all advertising and displays through this program while prohibiting eight categories of advertisements including those that:

> a. Depict or promote an illegal activity.
> b. Contain false, misleading, or deceptive material.
> …
> e. Are scornful of an individual or a group of individuals.
> …

> g. Support or oppose the election of any political candidate.
> h. Contain material which is obscene or sexually explicit, as defined by Ohio law.

R. 042. Mr. Calabrese contends that the provisions at issue here, the policy against scorn and political advertising, are not "unusual." R. 038.

Mr. Calabrese reviews "a lot of ads" in his position, but few have "jump[ed] out to [him] as a problem." R. 033, 036. He rejected four advertisements in fourteen years for not complying with RTA policy. Two of the proposed advertisements supported political candidates, including one who was a personal acquaintance of Calabrese. R. 032. Mr. Calabrese could not recall why the other two advertisements were rejected but they were not for violations of the policy against scorn. R. 032–033. Mr. Calabrese mistakenly allowed an advertisement for bungee jumping at a national park, which is illegal under a federal regulation. R. 033.

Mr. Calabrese claims that he does not "just rubber stamp all of the ads" but scrutinizes them for noncompliance. R. 036. For example, when LeBron James left the Cleveland professional basketball team for the first time, an advertisement was proposed that "might have been scornful." R. 036–037. Calabrese consulted with "some members of the Board of Trustees" to decide that the advertisement did not violate RTA policy. R. 035. In another circumstance, Mr. Calabrese fact-checked a claim about a roller coaster. R. 036.

**B. Plaintiff-Appellee's Proposed Application and Denial**

Plaintiff-Appellee Katherine Fisher is a seventeen-year-old environmental advocate who applied to purchase an advertisement on RTA vehicles on June 15, 2022. R. 016, 019, 020. She considered RTA vehicles an ideal medium to spread her message outside of her existing school-based influence. R. 020. Fisher believes recycling is a pressing and important issue in Cuyahoga County, so her proposed advertisement read, "People who don't recycle are TRASH. By not doing your part you are stealing the future from your children and grandchildren. *for a greener tomorrow, support the only true pro-environment candidate: Yuna Bang for mayor*." R. 039. Her message intentionally

included "strong wording" that was "not meant to make someone feel good" but rather evoke frustration or anger. R. 022. The strong language was "the point." Id. The advertisement's endorsement of mayoral candidate Yuna Bang for Mayor "felt like an important opportunity to affect change." Id.

Ms. Fisher's application was rejected on June 29, 2022, and her subsequent appeal for reconsideration was denied on July 14, 2022. R. 040–041. Calabrese said this decision "was pretty easy." The policy "obvious[ly]" violated the prohibition on supporting a political candidate, R. 038, and "[t]he proposed ad called people quote unquote "trash."… Just imagine if someone on the bus called another rider trash to their face," so violated the scornfulness policy. Id.

### C. Procedural History

Ms. Fisher brought this case on August 8, 2022, alleging RTA and Mr. Calabrese violated her First Amendment rights by denying her application and that RTA's policy is facially unconstitutional under the First Amendment. R. 008. She then filed a motion for preliminary injunction the following day. R. 010–011.

The district court granted relief to Ms. Fisher, ordering that the challenged advertisement be displayed. Fisher v. Greater Cleveland Regional Transit Authority (RTA), No. 22-cv-16123 (N.D. Ohio Oct. 12, 2022); R. 043–045. The court reasoned that RTA operated a public forum because it permitted political speech and inconsistently enforced its advertising policy. R. 044. RTA's policy was subjected to strict scrutiny, which RTA conceded that it could not meet. The court ruled in Ms. Fisher's favor, and RTA filed this timely appeal. R. 045.

## II. Discussion

### A. Standard of Review

This Court ordinarily reviews a district court's order granting a preliminary injunction for abuse of discretion, but when the First Amendment is implicated, *de novo* review is appropriate. Bays v. City of Fairborn, 668 F.3d 814, 819 (6th Cir. 2012). In

deciding motions for preliminary injunction, district courts weigh four factors: "(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction." Bays v. City of Fairborn, 668 F.3d 814, 818–19 (6th Cir. 2012). In the First Amendment context, the movant's likelihood of success on the merits predominates over the others, so this Court conducts *de novo* review. City of Fairborn, 668 F.3d at 819. See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp., 511 F.3d 535, 541 (6th Cir. 2007).

When determining whether a government entity's restriction on public speech violates the First Amendment, we first determine the type of "forum" at issue. Minn. Voters All. v. Mansky, 138 S. Ct. 1876, 1885 (2018). The Supreme Court recognized two types of fora at issue here: "designated public forums" and "non-public forums." Designated public forums have "not traditionally been regarded as a public forum" but which the government has "intentionally opened up for that purpose." Id. Governments may impose reasonable time, place, and manner restrictions on private speech in designated public forums, but content restrictions must satisfy strict scrutiny. Id. Non-public forums are not by tradition or designation a forum for public communication and the government retains the power to preserve the property for its dedicated purpose. Id. Restrictions to speech in non-public forums must be reasonable considering the forum's purpose and may not "suppress expression merely because public officials oppose the speaker's view." Id.

**B. RTA Operates a Nonpublic Forum**

[Court concludes that RTA operates a nonpublic forum.]

**C. RTA's Restrictions and the First Amendment**

Governments may restrict the content appearing in nonpublic forums, but those restrictions cannot discriminate based on the viewpoint expressed and must be reasonable given the forum's purpose. Am. Freedom Def. Initiative (AFDI) v. Suburban Mobility

Auth. for Reg. Transp. (SMART), 978 F.3d 481, 493 (6th Cir. 2020); Minn. Voters All. v. Mansky, 138 S. Ct. 1876, 1885 (2018). RTA's ban on political candidate advertising is reasonable but its policy against scornful advertisements is not viewpoint neutral and violates the First Amendment.

**1. Restriction on Speech For or Against Political Candidates is Reasonable.**

RTA rejected Ms. Fisher's advertisement for violating the agency's policy against political candidate advertising. Unlike the policies in prior cases, this policy is clear and objective, indicating that it is reasonable under the law.

When a government restricts speech in a nonpublic forum, content limitations must be reasonable given the purpose of the forum. Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 806 (1985). Reasonableness does not require the government to impose the least restrictive means to achieve a forum's purpose, nor must such purpose be compelling. Id. at 808. Rather, the restriction must only have a permissible reason and provide a "sensible basis for distinguishing what may come in and what must stay out." Mansky, 138 S. Ct. at 1888.

In Lehman v. City of Shaker Heights, a political candidate unsuccessfully challenged a city's ban on political advertisements on city buses. 418 U.S. 298, 299 (1974). The plaintiff wished to promote his candidacy for Ohio State Representative with advertisements on car cards. Id. at 299. The Supreme Court found, first, that the city operated a nonpublic forum, id. at 303, then ruled that the City had permissible reasons for imposing these content restrictions: short-term candidacy advertisements could jeopardize long-term commercial advertising, political advertisements could create doubts about favoritism, and riders "would be subjected to the blare of political propaganda." Id. at 304. The First Amendment, the Court held, does not require every publicly owned space to be open to every pamphleteer and politician. Id.

More recently in Minn. Voters All. v. Manksy, a political organization successfully challenged a prohibition on wearing political logos at polling locations

because the policy could not be applied reasonably. Mansky, 138 S. Ct. at 1892. The Court held that the polling locations were nonpublic forums, and Minnesota had a permissible purpose of creating an "island of calm" where citizens could peacefully vote. Id. at 1886–87. But the Court found that the state's definition of "political" was not capable of reasoned application. Id. at 1888–92. Minnesota's ban on materials that could be perceived as political issues carried with it inherent ambiguity. For example, a t-shirt reading "Support Our Troops" or "#MeToo" could be banned. Id. at 1889–92. The term "political" was "unmoored" and prone to "haphazard interpretation" rather than expressing an objective and workable standard. Id. at 1888. Despite these serious faults, the Court accepted that the insignia of political parties and candidates was "clear enough" to be reasonably restricted. Id. at 1889.

This Court followed this rationale two years later in Am. Freedom Def. Initiative (AFDI) v. Suburban Mobility Auth. for Reg. Transp. (SMART), where a civic organization challenged a transit agency's advertising policy against "political or political campaign advertising." AFDI, 978 F.3d at 486. With its policy, the transit agency sought "to minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience." The panel held the policy was unreasonable because the agency failed to adopt a "discernible approach" to determine what was allowed and disallowed. Id. at 494.

There, the Court reasoned that the term "political" was too ambiguous for reasonable application. In comparing "political" with "political campaign," it ruled that the latter lacked an "expansive reach" and could easily be identified by an objective person. Id. at 494, 498. Although someone could determine what is sufficiently "political" to warrant having their advertisement denied, "the subjective enforcement of an indeterminate prohibition increases the opportunity for abuse in its application." Id. at 497. In overruling the transit agency's policy against "political" advertising, the court concluded that the restriction on "political candidate" advertising suffered no such defect. Id. at 498.

Here, the challenged policy lacks the deficiencies of the Mansky and AFDI policies. RTA's policy against advertisements for or against political candidates had a permissible purpose, see Lehman, 418 U.S. at 303, and the policy is clear regarding which content is permissible and which is prohibited. AFDI, 978 F.3d at 498.

RTA had a permissible purpose when it banned advertisements by political candidates. Like Lehman, RTA sought to provide revenue, while assuring riders with a safe and pleasant experience. See Lehman, 418 U.S. at 304 (finding that short-term candidacy advertisements could jeopardize long-term commercial advertising and impose on captive riders). Ensuring that customers continue to use RTA services is central to the financial health of the transit system, and preventing these impositions advances that permissible purpose. R. 042, 037. This policy does not fit perfectly with its purpose. Political advertising permitted under RTA's policy could cause riders discomfort or jeopardize long-term commercial advertising. But the First Amendment does not obligate RTA to narrowly tailor its policy in this manner when it operates a nonpublic forum.

RTA's prohibition on advertising that advocates for or against a political candidate is clear and objective. The Mansky and AFDI courts both addressed policies that banned all "political" speech, not only speech involving candidates for office. Mansky, 138 S. Ct. at 1889; AFDI, 978 F.3d at 497. Those policies gave administrators discretion to decide whether an advertisement with overtones of public issues was actually "political" and therefore in violation of the policy. AFDI, 978 F.3d at 497. Both cases implied that prohibiting political candidate advertising was sufficiently clear. Mansky, 138 S. Ct. at 1889; AFDI, 978 F.3d at 498. That is precisely what RTA has done.

Ms. Fisher's proposed ad clearly violates RTA's policy. Her advertisement endorses "the only true pro-environment candidate: Yuna Bang for mayor," befitting of the "blare of political propaganda" that RTA sought to avoid. See Lehman, 418 U.S. at 304. RTA objectively determined that the ad violated its reasonable policy to protect the purpose of its forum.

RTA's prohibition on political candidate advertising is facially constitutional and, as applied to this case, does not violate Ms. Fisher's First Amendment rights.

**2. Restriction on Scornful Speech is Viewpoint Discriminatory.**

RTA also rejected Ms. Fisher's advertisement because it violated RTA's policy against scornful advertisements. Recent decisions from the Supreme Court and this Court compel us to hold that this policy is not viewpoint neutral and violates the First Amendment.

Public entities may implement reasonable content restrictions in nonpublic forums but may not impose restrictions that discriminate on the perspective expressed. Mansky, 138 S. Ct. at 1885–86. For example, the government may ban political campaigning on a military base, but if it were to allow such speech, it could not provide access to only the Democratic or Republican Party. See Greer v. Spock, 424 U.S. 828, 831, 838–40 (1976); Rosenberger v. Rector and Visitors of Univ. of Va., 515 U.S. 819, 829–30 (1995). Similarly, the government may not determine that speaking in favor of one issue or cause is acceptable but speaking against it is prohibited. AFDI, 978 F.3d at 500. When the government acts in this manner, "it suggests that the government seeks to accomplish" more than the forum's assigned purpose, but instead seeks to suppress certain ideas. AFDI, 978 F.3d at 499 quoting R.A.V., 505 U.S. at 390.

Two recent Supreme Court decisions are pertinent to our analysis. In Matal v. Tam, 137 S. Ct. at 1751, an individual successfully challenged the denial of a trademark because the government's policy was viewpoint discriminatory. The government denied a trademark for "The Slants," an East Asian racial slur, because it violated the Lanham Act's disparagement clause. The Supreme Court held the clause was facially unconstitutional because the clause required the government to favor one moral standard and disfavors another. Passing judgment on the adequacy of a moral standard is viewpoint discrimination and therefore, impermissible under the First Amendment. Id. at 1763. Two years later in Iancu v. Brunetti, 139 S. Ct. 2294, 2297–2298, 2301 (2019), the government denied a trademark because the brand name resembled a vulgarity. A unanimous Supreme Court held that the "immoral or scandalous matter" provision of the

Lanham Act disfavored certain ideas while favoring others, which like Matal, was viewpoint discrimination. Id. at 2301–2302, citing Matal, 137 S. Ct. at 1751.

This Court applied Iancu and Matal to a transit advertising case, holding that a policy prohibiting advertisements that are "likely to hold up to scorn or ridicule any person or group of persons" violated the First Amendment. AFDI, 978 F.3d at 486. The Court explained that the transit agency's policy distinguished between two opposed sets of ideas: those promoting a group of people and those disparaging the group. Id. at 500. The transit agency prohibited an advertisement because it implied that Islam was a violent religion, but the agency conceded that an advertisement implying that Islam was a peaceful religion would be permissible. Id. The policy, if allowed, required a public official to decide in which contexts speech disparaged a person or group, and when an advertisement with a negative tone did not "hold up to scorn." This Court found that viewpoint discrimination did not vary "depending on the context," and accordingly, the policy could not stand. Id. at 501.

Here, the same logic applies. RTA's prohibition on advertising that is "scornful of an individual or a group of individuals" discriminates based on the viewpoint expressed.

The scornfulness policy requires a context-dependent analysis and enables a public official to pick which ideas may appear in the forum. Instead of prohibiting an entire subject of discussion, the policy distinguishes between two ideas: those that ridicule or scorn a group and those that support the group. See id. at 498, 500. By favoring speech that is not scornful, RTA's policy enacted the same error appearing in Matal, Iancu, and AFDI. See Matal, at 137 S. Ct. at 1763; Iancu 139 S. Ct. at 2301, AFDI, 978 F.3d at 486. A policy disfavoring scornful speech cannot be evenhandedly applied any more than a policy that prohibits disparaging or ridiculing a group of persons. See AFDI, 978 F.3d at 486, 501. These policies require public officials to make decisions depending on the context, indicating they are facially invalid under the First Amendment.

The unconstitutionality of RTA's scornfulness policy becomes clear when applied to this case. Ms. Fisher's proposed advertisement disparages people who do not recycle. The Supreme Court and our Circuit precedent dictate that this must be compared to an

advertisement that promotes people who do not recycle, rather than scorn them. See AFDI, 978 F.3d at 500 (comparing advertisements promoting church attendance to those ridiculing church attendees). If an advertisement praising people who do not recycle would be allowed, the policy unconstitutionally discriminates based on viewpoint. An advertisement that read, "Recycling is too expensive. Thank you for throwing your cans in the trash!" does not appear to violate any provision of RTA's policy, R. 042, and would likely be allowed.

We could further compare Ms. Fisher's advertisement that "People who don't recycle are TRASH" to an advertisement that read, "Not Recycling is Bad." The two advertisements share a perspective on recycling and have a negative tone, but the latter would be unlikely to violate RTA's policies. R. 042. Even so, an official must determine whether this advertisement was sufficiently disparaging to warrant the condemnation given the context of transit advertising. See AFDI, 978 F.3d at 501. Our precedent seeks to avoid this type of line drawing since viewpoint discrimination cannot vary depending on the context. Id. The official's discretionary decision would be impermissible under the First Amendment.

RTA's policy against scornful advertisement impermissibly chooses which viewpoints are allowed in its forum and is facially unconstitutional under the First Amendment.

**III. Conclusion**

The Court concludes that RTA permissibly rejected Ms. Fisher's proposed advertisement. Fisher cannot show she was harmed by the impermissible grounds for denial as the policies are separate and independently sufficient. See Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 285–86 (1977) (upholding a government action when there is a constitutional justification, even if the government considered an unconstitutional factor that supported the action). We, therefore, REVERSE the district court's order granting a preliminary injunction and REMAND with instructions that the Plaintiff's complaint be dismissed.

## Applicant Details

| | |
|---|---|
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## Applicant Education

| | |
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| Date of JD/LLB | **May 19, 2024** |
| Class Rank | **5%** |
| Law Review/ Journal | **Yes** |
| Journal(s) | **Buffalo Law Review** |
| Moot Court Experience | **Yes** |
| Moot Court Name(s) | **Philip C. Jessup International Law Moot Court Competition** |

## Bar Admission

## Prior Judicial Experience

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| Judicial Internships/ Externships | **No** |
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**This applicant has certified that all data entered in this profile and any application documents are true and correct.**